

2004

## Reddish v. Russell : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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NICHOLE P. REDDISH,

Petitioner and Appellant,

VS.

SAMUEL RUSSELL,

Respondent and Appellee.

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Appellate Court No. 20040027-CA

BRIEF OF APPELLANT

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On Appeal from an Order of the Third District Court,  
Salt Lake Department, Judge Timothy R. Hanson

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

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IN THE UTAH COURT OF APPEALS

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NICHOLE P. REDDISH,	:	
	:	
Petitioner and Appellant,	:	Appellate Court No.
	:	20040027CA
v.	:	
	:	
SAMUEL RUSSELL,	:	
	:	
Respondent and Appellee.	:	

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BRIEF OF APPELLANT NICHOLE P. REDDISH

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**STATEMENT OF JURISDICTION**

Appellant appeals from a final order of the Third District Court, Salt Lake Department, the Honorable Timothy R. Hanson presiding, granting judgment in favor of appellee Samuel Russell. The instant appeal was commenced in the Utah Court of Appeals on or about the 8<sup>th</sup> day of January, 2004, with jurisdiction conferred upon that court pursuant to Utah Code Ann. § 78-2a-3, (2) (h).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

AND THE STANDARD OF REVIEW

Issue No. 1: Did the trial court err in concluding that there was not a material and substantial change of circumstances sufficient to warrant an increase in child support.

STANDARD OF REVIEW: The trial court's legal conclusions are reviewed de novo under the correction of error standard of review, and this Court will accord no particular deference to the trial court's conclusions. United Park City Mines Co. v. Greater Park City Co., 870 P.2d 880, 885 (Utah 1993), State v. Pena, 869 P.2d 932, 936 (Utah 1994). RECORD CITATION: This issue was raised below at these pages but not limited to: 55, 56, 61, 62, 53, 144, 41, 40, 145, (Trial Transcript), and has therefore been preserved for appeal.

Issue No. 2: Did the trial court err in how it determined the Respondent's true income?

STANDARD OF REVIEW: The standard of review is whether the trial court abused its discretion. Deeben v. Deeben, 772 P.2d 972 (Utah App., 1989), Ball v. Peterson, 912 P.2d 1006, 1009 (Utah App. 1996). RECORD CITATION: Ms. Reddish preserved this issue in the trial court. 41, 144, 40, 145, and throughout the brief. (Trial Transcript).

Issue No. 3: Did the trial court abuse its discretion in not awarding attorney's fees to the Petitioner?

STANDARD OF REVIEW: The standard of review is whether the trial



court abused its discretion. Deeben v. Deeben, 772 P.2d 972 (Utah App., 1989). RECORD CITATION: Ms. Reddish preserved this issue in the trial court. 151, Statement of Facts 1, 2, 4, 6, 10, 14, 15, 16, 18, 20, 21, 22, 23, 25, 31 and 32.

**Issue No. 4:** Did the trial court err in failing to order that Respondent pay one hundred percent of medical and dental insurance and costs since Petitioner's income is 4% of Respondent's income and she has the need and he has the ability to pay?

STANDARD OF REVIEW: The standard of review is whether the trial court abused its discretion. Deeben v. Deeben, 772 P.2d 972 (Utah App., 1989). RECORD CITATION: This issue was raised below during trial at Record 115, 62, 53, 43, 38, trial exhibits 17.

#### **DETERMINATIVE AUTHORITIES**

The following statutory authorities are either determinative in this appeal or are of such central importance as to merit their inclusion herein:

Utah Code Ann. § 30-3-5(3) and (4) (2003):

The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and \for distribution of the property and obligations for debts as is reasonable and necessary.

Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification

Utah Code Ann. § 78-45-3(1) (2003):

Every father shall support his child and every child

shall be presumed to be in need of the support of his father. Every man shall support his wife when she is in need.

Utah Code Ann. § 78-45-6 (2003):

The district court shall have jurisdiction of all proceedings brought under this act.

Utah Code Ann. § 78-45-7.2(1), (2)(a), (8)(a), (b), (c), (9)(a), (b), (ii), (iii), (iv), (c).

The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

The child support guidelines shall be applied as rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

- (8)(a) If a child support order has not been issued or modified within the previous three years a parent, legal guardian, or the office may petition the court to adjust the amount of a child support order.
- (8)(b) Upon receiving a petition under Subsection (8)(a), the court shall, taking into account the best interests of the child, determine whether there is a difference between the amount ordered and the amount that would be required under the guidelines. If there is a difference of 10% or more and the difference is not of a temporary nature, the court shall adjust the amount to that which is provided for in the guidelines.
- (8)(c) A showing of a substantial change in circumstances is not necessary for an adjustment under subsection (8)(b).
- (9)(a) A parent, legal guardian, or the office may at any time petition the court to adjust the amount of a child support order if there has been a substantial change in circumstances.
- (9)(b) For purposes of Subsection (9)(a), a substantial change in circumstances may include:
  - (i) material changes in custody;
  - (ii) material changes in the relative wealth or

assets of the parties;

(iii) material changes of 30% or more in the income of a parent;

(iv) material changes in the ability of a parent to earn;

(v) material changes in the legal responsibilities of either parent for the support of others.

Utah Code Ann. § 78-45-7.12 (2003):

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.

Utah Code Ann. § 78-45-7.18(1) (2003):

There is no maximum limit on the base child support award that may be ordered using the base combined child support obligation table using the low income table, or awarding medical expenses except under Subsection(2).

Utah Code Ann. § 78-45-7.5 (4)(a), (b), (5)(a) (2003):

As used in the guidelines, "gross income" includes

(4)(a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes

(5)(a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly amount.

Utah Code Ann. § 78-45-8 (2003):

The court shall retain jurisdiction to modify or vacate the order of support where justice requires.

#### STATEMENT OF THE CASE

##### A. Nature of the case

This is an appeal from an order of the Third District Court, Salt Lake Department, the Honorable Timothy R. Hanson presiding, denying Petitioner's Verified Petition to Modify Order. The Petitioner had sought to modify child support for the parties' minor child Marquel and to have the Respondent pay one hundred percent of the medical costs for Marquel because of the enormous disparity in the parties's incomes and debts.

##### B. Course of the Proceedings and the Disposition Below

On April 8, 1991, a Verified Complaint for Paternity was filed. The Respondent's response was a demand for blood testing. The Respondent was found to be the father of Marquel Reddish, who was born on the 15<sup>th</sup> day of August, 1991. At the time of the trial she was eleven years old.

In 1994, child support was set at \$224.00 per month. There was no voluntary increase in child support and the Petitioner, a single mother, sought help through the Office of Recovery Services. Child support was subsequently increased in 1999, to \$728.00 per month. This was a stipulated amount, and the Office of Recovery Services agreed to utilize a 1997 income tax return, even though it was two years dated, since the income of the Respondent, even in

1997, exceeded the highest level of the child support guideline table. The Respondent's income, using his 1997 figures, was \$10,549.00 per month. There was no inquiry by the Office of Recovery Services as to the needs of the child.

A Petition to Modify Child Support was filed September 25, 2001.<sup>1</sup>

On June 7, 2002, the Petitioner, by leave of Court, amended her petition to add the additional cause of action that the Respondent should pay one hundred percent of all medical and dental costs of Marquel.

After two separate motions to compel answers to Interrogatories, the latest of which resulted in attorney's fees for the Petitioner, the matter came to trial on May 8, 2003.

The Court heard the testimony of the witnesses, examined the exhibits on file, and concluded that a material and substantial change of circumstances had not been proven. The Court denied an increase in child support and that the needs of the child were being met, in that the Respondent was current on his child support and current on his one-half of the orthodontic bills, one-half of non-covered medical bills and one-half of daycare expenses.

The Court, did, however, order Respondent to pay \$50 per month into a college trust fund for Marquel, which purportedly matched the amount being paid into a like fund for his other children.

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<sup>1</sup> The Docket Sheet incorrectly lists this as a "Divorce Modification".

Although the Respondent prevailed on the issue of child support and medical and dental payments, the Court, due to equitable considerations, denied Respondent's request for attorney's fees.

This appeal is taken from the trial court's find Order and Judgment entered on the 11<sup>th</sup> day of December, 2003 denying Petitioner's Verified Petition to Modify Order.

No prior nor related appeals have been taken.

### **C. Statement of Facts**

1. On April 8, 1991, the State of Utah, Department of Human Services, through the office of the Attorney General, filed a Verified Petition for Paternity on behalf of Nichole P. Reddish. R. 1-7, Verified Complaint for Paternity).

2. On September 30, 1991, Respondent Samuel H. Russell filed a motion to compel HLA blood tests. (R. 21-22), which motion was granted December 2, 1991. (R. 27-28).

3. The Respondent was subsequently determined to be the father of the minor child Marquel P. Reddish. (T.T. at 12, 21, R. 164-166).

4. In the way of discovery, Petitioner sent out interrogatories and a request for production of documents but needed to file a motion to compel on or about June 30, 1992, when the answers were not forthcoming. (R. 46-47).

5. On the 11<sup>th</sup> day of August, 1992, the Motion to Compel was granted from the bench on that date and reduced to an order on

August 26, 1992. (R. 51, R. 52-53).

6. On April 19, 1993, the Petition was settled, and judgment was entered against the Respondent and for the State of Utah for \$1,159 medical costs and \$2,673 for AFDC reimbursement. (R. 80-82).

7. On January 12, 1994, Judgment and Order Entered at Pre-Trial Settlement Conference was entered determining, inter alia, that the Respondent Samuel H. Russell is the father of Marquel P. Reddish. The document is dated January 12, 1994 but was not entered until January 14, 1994. (Judgment and Order Entered at Pre-Trial Conference, p.2 paras. 1 and 2, R. 164-166).

8. On April 15, 1994, the Court entered Findings of Fact and Conclusions of Law, followed by an order reflecting the same, on April 16, 1994. Child support was set at \$224. (R. 167-173, 174-179).

9. The child support order was based on income of \$20,000 per year by Mr. Russell for the year 1992, even though he voluntarily terminated his employment in 1991, while making \$51,679 the prior year. (R. 167-173, Findings of Fact and Conclusions of Law, p. 3, paras. 8, 9 and 12).

10. The State of Utah, Office of Recovery Services, through the aegis of the Attorney General, on behalf of Nichole Reddish, reached a stipulation in 1999 that Mr. Russell should increase his child support from \$224 to \$728 per month, beginning in July, 1999. (R. 184-196).

11. The stipulation further provided that both parties should share equally all out-of-pocket medical and dental costs including the child's per capita share of the insurance premium, deductibles, co-payments and all other reasonable and necessary uninsured medical and dental expenses. (R. 184-196).

12. The calculations for determining child support are found in the attached Worksheet Verification Affidavit , with attachments Child Support Obligation Worksheet with the 'hand written interlineation above line item 8, which appears to state "(1) Based on imputed minimum wage (2) **Average income Rec 1997**". Further, Mr. Russell's 1997 U.S. Individual Income Tax Return is attached, which shows an annual gross income in 1997 of \$126,589. His wages, etc., show \$37,536. His wife's income was \$36.27. (Order Modifying Support Order, specifically attachments referenced above, R. 184-196, 197-200).

13. On the 25<sup>th</sup> day of September, 2001, Petitioner filed a Verified Petition to Modify Order, seeking to modify the parent time with Mr. Russell, as it was alleged he was practically a stranger to the minor child Marquel, then age 10, and that visitation should be graduated and supervised rather than standard, that the child support should be increased because of a substantial increase in the father's income and that because the father was self-employed the income of his company should be utilized in considering his income. (R. 264-266, Verified Petition to Modify



Order, p. 2, paras. 6-10).

14. On November 20, 2001, after having sent Respondent Interrogatories and Request for Production of Documents and having received what Petitioner considered an inadequate response, Petitioner filed a Motion to Compel. (R. 271-274). This was the second Motion to Compel. (See paras. 4 and 5 above).

15. Respondent was ordered to answer interrogatories 7, 8, 9, 10 and 11 and provide documents requested in number 3. (R-329-330).

16. Respondent filed a Motion for Summary Judgment, which was denied on the 13<sup>th</sup> day of March, 2002 and Petitioner was awarded fees. (R. 390-392).

17. Petitioner filed a motion for temporary orders regarding dental and orthodontia fees, which motion was denied but the Court allowed Petitioner to amend her complaint to include a cause of action relating to Respondent paying one hundred percent of the medical and dental (including orthodontia) fees on April 24, 2002. (R.419).

18. On June 5, 2002 Petitioner filed a third Motion to Compel. (R. 429-482).

19. On June 7, 2002, an Amended Petition to Modify Order was filed which sought for the Respondent to should pay one hundred percent of all medical, dental and orthodontist expense for the minor child. (Amended Petition to Modify Order, paras. 12,12 (two

paragraphs 12's) and 13, and R. 483-489).

20. On June 25, 2002, the Court ordered the Respondent to answer interrogatories, 1, 2, 3b, 6,7,8,9,10 and documents request in No. 2, and reasonable attorney's fees were awarded. (R. 490-491).

21. When Petitioner sent a subpoena to Layton Christian Academy on or about September 30, 2002, to determine when the minor children of Respondent attended, and at what cost, the Respondent filed a motion to quash the subpoena. (R. 535-537, 538-539).

22. This required Petitioner to prepare and file a Memorandum of Points and Authorities in Opposition to Respondent's Motion to Quash Subpoena Duces Tecum. (R. 540-542).

23. The Court denied the motion, finding it moot. (R. 553-554).

24. Petitioner filed a Financial Declaration on December 2, 2002, which was necessary to trigger a pretrial conference. (R. 565-570).

25. The Notice of Pre-Trial Settlement Conference requires that "The Financial Declaration must be filed with the domestic calendar clerk and delivered to opposing counsel at least five (5) days prior to the Pre-trial Settlement Conference. Failure to file the Financial Declaration may result in the Pre-trial Conference being continued, attorney's fees assessed, and other sanctions

imposed against one or both parties".

(R. 571-5720. Nowhere in the Court files is there any indication of a filing of a Financial Declaration by the Respondent; indeed, a review of the record indicates that it was not filed by the Respondent.

26. On January 15, 2003, a Pre-trial Conference was held with the Domestic Commissioner. (R-574).

27. The Commissioner issued a Minute Entry, in which he identified some of the trial issues as a claim for an increase in child support and for an order requiring the respondent to pay for private school tuition for the parties's daughter, and that since respondent's attorney pointed out that respondent's income had not increased since the date of the last modification, but had declined, that this might constitute further grounds for denial of the petition to modify. (R.574).

28. Petitioner filed an Objection to Commissioner's Entry, reciting that the Petitioner's intent to show specific expenses and other needs to support a claim for child support in excess of the tables, in accordance with Reinhart v. Reinhart (previously cited by the Commissioner). (R. 575-578, 579-606).

29. Additionally, the Commissioner's claim that Petitioner was seeking an order requiring Respondent to pay for private school tuition for the parties' daughter, that is nowhere to be found in the record (although it was acknowledged in the Objection that this

might well be ultimately argued as a need for the child, this was not raised in any prior pleadings).(R.579-606).

30. The argument also put forth by the Commissioner that "This matter has been before the Commissioner previously for a request to temporarily increase child support and the Commissioner has recommended that request be denied..." is simply not born out by the record. A review of the record indicates this never occurred. (See Record generally; R. 579-606).

31. The other error of the Commissioner was the gratuitous statement that "respondent's counsel has pointed out that respondent's income has not increased since the date of the last modification in this matter and that, if anything, it has slightly declined". (R. 575-578).

32. This was in error as it was argued in Respondent's Summary Judgment motion (R.312-315), which was opposed by the Petitioner (R. 351-383), and the Court denied the motion and awarded attorney's fees to the Petitioner (R. 387-389).

#### **SUMMARY OF THE ARGUMENT**

Petitioner filed a Verified Petition to Modify Order on September 25, 2001. The Petition sought to modify orders entered by the Third District Court in 1994 and 1999.

The first issue related to visitation and this cause of action was to limit visitation by the Respondent to reflect that he had seldom exercised visitation for the prior four years. This is not

an issue being appealed.

The primary issue before this Court was to increase child support beyond what was ordered in 1999. The child support ordered in 1999 was \$728, and this was increased from a prior support order entered in 1994 of \$224 per month. However, the Respondent's income exceeded the statutory child support guideline amounts at that time. The income utilized for purposes of child support calculation in 1999 was the Respondent's income in 1997, and that amount was, according to the Child Support Obligation Worksheet, \$10,549 per month.<sup>2</sup> It was acknowledged by Petitioner's attorney, the office of the Attorney General, that it was essentially inconsequential as to the amount of the Respondent's income in 1999, since his 1997 income already exceeded the statutory tables for child support.

As a result, it can be concluded that the apparent goal of the State agency representing Ms. Reddish was to increase the child support strictly within the confines of the statutory support tables, without consideration of the actual needs of the child.<sup>3</sup> To that end, there was no argument made as to any needs of Marquel,

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<sup>2</sup> The attached income tax return for 1997 showed *adjusted gross income* of \$126,589, and under wages, etc., line item 7 of the return, the amount is \$37,536. Dividing \$126,589 by twelve months equals \$10,549.08, the amount used for the Respondent's income. It is noteworthy that this amount was stipulated to by the Respondent and there was no argument, as was made at trial, that this amount should have business expenses deducted.

<sup>3</sup> Since the Reinhart appeal was filed July 23, 1998, and Utah Code Ann. Section 78-45-7.12 was not enacted at that time, there would have been no reason to look to a case by case standard incorporating the "reasonable needs of the child".

just a simple application of mathematical formula.

Because the parameters of the State's goal were narrowly confined to the support tables, they did not explore the needs of Marquel P. Reddish, in 1999.

A focus of the instant trial however, was not a strict application of a mathematical formula, but the real day to day needs of an eleven year old girl. Those needs included Marquel's school and extra-curricular activities in which Marquel was currently involved. Other identifiable needs were her own computer with upgrades, school lunch without the necessity of having it subsidized by the State, attendance at annual camps for peer age girls, soccer camps and instruction, advanced soccer, dance, skiing, piano lessons, attendance at a private school commensurate with her abilities and an evolving college fund. Virtually none of these "needs" would be or could be met solely with Ms. Reddish's income. Some, like private schooling, were never able to be put in place. Without the intervention of a friend of the family, who had known Marquel since birth, and who unfailingly contributed monthly contributions of approximately \$500 per month, these needs would not have been met.

The needs outlined above were not considered in the 1999 modification. They were not contemplated within the four corners of the original 1994 order reflecting paternity and other issues. Although Mr. Russell's income was a factor in the original order

and the 1999 order, which increased the original order of child support from \$224 per month to \$728 per month five years later, it was not the sole factor in seeking another increase in the 2001 trial.

Additional factors in seeking the modification of the original order and the subsequent order in 1999, was Mr. Russell's patent lack of interest in Marquel as reflected in his notable lack of visitation. Ms. Reddish sought to have it curtailed or at least, if consistent, that it be graduated, which the court ordered. Also, the court adopted the stipulation of the parties as to a sharing of the medical and dental costs in 1999. Unfortunately for Ms. Reddish, her income continued at a nominal amount while Mr. Russell's income, from 1997 figures, more than tripled. Another hotly disputed issue at trial was Mr. Russell's true income. The trial Court erred in its understanding of Mr. Russell's income, even to the point of stating that Mr. Russell's income tax return was a Sub S Corporation, when it states on its face it is an Individual Income Tax Return (1040). This had the unsettling effect of misunderstanding Mr. Russell's income to be substantially less than what it actually was, and the err was between the true income of \$36,735.25 per month and the accepted testimony of Mr. Russell that his income was between twelve and thirteen thousand dollars per month. The difference is substantial, at \$23,735.25 PER MONTH for thirteen thousand, or \$24,735.25 for twelve thousand.

In a colloquy with the Court, the Court was adamant that the expenses still needed to be deducted (T.T. 133, 24; 134, 1-6). They had already been deducted, as was clear from a review of the exhibit.

At the same time as Mr. Russell's income was dramatically and inexorably increasing, and Ms. Reddish's income remained nominal, Marquel's dental expenses skyrocketed because of orthodontia needs. This constituted another material and substantial change of circumstances, in that it was possible perhaps to anticipate braces, but Mr. Russell's income so outpaced Ms. Reddish's that his ability to pay and her inability became, as a practical matter, a tremendous sacrifice for her and less than a bump in the road for him. Indeed, his testimony at trial was that his business, which provided him an \$836,000 house, two late model cars and a boat, among other luxuries, and allowed him to make an annual charitable contribution of \$31,000 in 2000 (more than Ms. Reddish's entire yearly income), paid for his medical and dental insurance. Ms. Reddish had no medical or dental insurance.

In sum, the lower court ought to have found, for the preceding reasons, a material and substantial change of circumstances sufficient to warrant a modification in the order of 1999.

Had the court found a material and substantial change of circumstances, and ordered an increase in child support, Ms.



Reddish, as the prevailing party, should have been awarded attorney's fees.

## ARGUMENT

### I.

#### **THE TRIAL COURT ERRED IN CONCLUDING THAT THERE WAS NOT A MATERIAL AND SUBSTANTIAL CHANGE OF CIRCUMSTANCES SUFFICIENT TO WARRANT AN INCREASE IN CHILD SUPPORT**

Utah Code Ann. § 78-45-7.2 (9)(a) states that "A parent, legal guardian, or the office may at any time petition the court to adjust the amount of a child support order if there has been a substantial change in circumstances". It defines a substantial change of circumstances, as, inter alia, material changes in the relative wealth or assets of the parties (Id, at (9)(b)(ii), material changes of 30% or more in the income of a parent (Id, at (9)(b)(iii), material changes in the ability of a parent to earn (Id, at (9)(b)(iv), and material changes in the medical needs of the child (Id, at (9)(b)(v).

Nichole P. Reddish easily falls within the ambit of each of these statutory requirements.

#### **a. Material and Substantial Change of Circumstances**

Ms. Reddish's circumstances in 1999, the most recent change in the original court order setting child support (as well, as among other things, settling paternity) were categorically different than in 1999. Because the State agency representing Ms. Reddish, the State of Utah Office of Recovery Services, reached a

stipulation for the resolution of the child support issue (all other issues, i.e., insurance cost division, out-of-pocket expenses, day care costs, which were paragraphs 3, 4 and 6 of the 1999 order virtually mirrored paragraphs 3, 4 and 9 of the 1994 order), the only real change from the 1994 order was an increase in child support. However, there are no Findings of Fact and Conclusions of Law in the 1999 order. There were Findings and Conclusions in the 1994 holding, and paragraph 13 of the Findings states, "That at the present time the plaintiff is unemployed, attending school part time and received state aid". (R. 167-173, Findings of Fact and Conclusions of Law, para. 13). The evidence presented at trial, is that Ms. Reddish was gainfully employed (T.T. 56, 22) and had been for a period of years as a legal secretary(55, 24; 56, 6), that her income was \$12 per hour (T.T. 56, 3), and was no longer receiving state aid. (61, 25; 62, 1-19) These changes, for purposes of the current modification petition, are materially different from at least the 1994 order. There are more obvious changes, equally material, as well.

It was shown at trial that the Respondent's income had increased dramatically from 1997 to 2001, while the Petitioner's income remained nominal. (Trial Exhibits 2,3,4,10, 15, 16). Respondent's gross income in 1997 was \$10,549 per month, and in 2000 it was \$36,735.25. (Trial Exhibit 4).

Although the Respondent was ordered in both the 1994 order

and the 1999 order (paragraph 2, 1994 order, paragraph 3, 1999 order) to provide medical, hospital and dental insurance for Marquel if it became available through an employer at a reasonable cost, it was never provided by Mr. Russell until nine or ten months prior to the trial date. (T.T. 53, 1-5). This is particularly unconscionable since Mr. Russell was his own employer, and had an income, in 1997, of over \$10,000 per month, and in 2000, \$36,735.25 (Child Support Worksheet, 1999 Order, R. 197-200, Trial Exhibit 4).

In other words, with his large income, he never got around to insuring that his daughter Marquel was provided insurance. What is equally unfathomable, is that, in his testimony at trial, he stated that his company, not him, paid for the insurance. However, he nevertheless deducted his insurance cost from Ms. Reddish's monthly child support as if it were his personal income. (Trial Exhibit 6, question 2(c)).

## **II.**

### **THE TRIAL COURT ERRED IN DETERMINING MR. RUSSELL'S TRUE INCOME**

The lower court, when apprised of Mr. Russell's income (Trial Exhibit 4), alluded to there not being any deductions for business purposes and that the income tax return, which showed \$440,823 as Mr. Russell's annual income, surely had business deductions and that a simple dividing by twelve to determine his monthly income was inaccurate. (T.T. 144, 13-16, Findings of Fact, para. 16.). The Court erred in this conclusion. The income tax return clearly

shows adjusted gross income of \$440,823. Further, in accordance with Utah Code Ann. § 78-45-7.15, it is incumbent upon the party who is self-employed to show, in an evidentiary fashion, that his deductions are legitimate. There was no attempt by the Respondent to do this. Therefore, his income must stand as claimed by the only evidence before the Court. That evidence is his 2000 income tax return with an adjusted gross income of \$ \$440,823 (Trial Exhibit 4).

Respondent's testimony (T.T. 41,2-7) that his company, of which he was the sole shareholder, paid his some of his expenses such as car payments, medical insurance and his boat, ought to be added back in to his return. Since there were no amounts offered, at the very least the amount stated in his return should be adopted as the only amount with which the Court should utilize. Utah Code Ann. § 78-45-7.5 requires a specific finding regarding the reasonable business expenses. See also Breinholt v. Breinholt, 905 P.2d 877, 880 (Ut. App. 1995). Although there is a general allusion to business expenses, there is no finding with any specificity, other than a general one, in the Findings of Fact and Conclusions of Law. (T.T. 144, 12-23, also see paragraph 16, Findings of Fact and Conclusions of Law, "Respondent is responsible to pay taxes and there are also business expenses to calculate, which are indicated in his return on the schedules."). The business expenses are not listed because this is not a Sub S income

tax filing, but an individual return. Mr. Russell's testimony that his take home income was really only about "thirteen to fifteen thousand a month" simply does not square with his expenses and his income tax return. He testified he has a house valued with an appraised value of mortgage at about \$856,000. (T.T.40, 10-11). His income tax return shows, on line 51, an income tax payment of \$120,000 per year. If so, and his income actually is actually as he represented it to be, at \$12,000 to \$13,000 a month, how is it possible he could afford as much as \$10,000 per month as estimated taxes? His net income, then, would not be \$13,000 per month but \$3,000 per month. It would be even less at \$12,000 per month.

The Court erred in concluding that Mr. Russell's income was not \$448,823(T.T. p. 144, 10-24, 145, 1-6).

**a. The Office of Recovery Services made no effort to determine Mr. Russell's true income in 1999.**

There is not an issue that the Office of Recovery Services, in 1999, sought Mr. Russell's true income. The evidence is clear that they utilized his income tax return for 1997, which showed his income to be \$10,549. This is indicated in their interlineation under "Father", on the Child Support Worksheet, in the category of "Gross Monthly Income", and has a "2" in the corner. (R.197-200, Child Support Worksheet). Under "2", it appears to state "Average income Rec. 1997", although the "Rec" might be "Rev", for perhaps "reviewed". Irrespective, the income is \$10,549 per month, but is

not for 1999 but for 1997. It is however, used for calculating the 1999 child support. Sadly, the child did not get the benefit in 1997.

Although the Petitioner's Petition to Modify alludes to the Office of Recovery Services failing to take into consideration the self-employment of the Respondent (R. 264-266, para.9, Petition), this language is surplusage to the core issue of Respondent's dramatic increase in income. The Respondent tops out at the maximum amount on the child support guideline scale even at his income level in the 1999 adjustment using figures from his 1997 income, and thus additional child support must be reviewed on a case by case basis. It is clear, however, that Mr. Russell's income has increased from the 1999 modification. The 1999 change, using his 1997 income of \$10,549 per month increased to \$30,000 in 2000, an increase of about 300 percent. That is a fairly substantial and material change in the material circumstances of Mr. Russell.

When the combined gross income exceeds the highest level specified in the child support table, then a just and appropriate amount should be fixed on a case by case basis, as required by Utah Code Ann. § 78-45-7.12 and Reinhart v. Reinhart, 963 P.2d 757 (Utah App. 1998). The just and appropriate amount should have a foundation in the needs of the child.

b. Mr. Russell's other children's needs.

Child support awards should approximate actual need, and when possible, assure the children a standard of living comparable to that which they would have experience if no divorce had occurred. Ostler v. Ostler, 789 P.2d 713, 716 (Utah App. 1990). In the Reddish case, of course, there was no marriage and therefore no divorce. However, the equitable principles still apply. Mr. Russell, in his testimony, provided for his own other children as follows: Holden Russell, \$462 per month, includes school at \$103., food and personal items at \$120, vacations \$50, going out to dinner \$16, movies and entertainment \$5, clothing \$84, college savings account \$50, medical and dental \$34. For Carley Russell, Mr. Russell breaks down his expenses as food and personal items, \$120, vacations \$50, going out to dinner \$16, movies and entertainment, \$5, clothing \$84, college savings account \$50, medical and dental insurance \$34, gymnastics \$98, birthday gifts \$7, soccer \$7, school lunch \$10, for a total of \$481. For Taylor Russell, food and personal items \$120, vacations \$50, going out to dinner \$16, movies and entertainment \$5, clothing \$84, college savings account \$50, medical and dental insurance \$34, gymnastics \$200, birthday gifts \$9, school lunch \$10, for a total of \$578.

The preceding are all from Mr. Russell's answers to interrogatories, pgs. 3 and 4. (T.T. 35, 13-25; 36, 1-25, 36, 1-14). This is one yard stick of measurement as to how Marquel, his other daughter, should be maintained in terms of needs as indicated

in what Mr. Russell does for his own in home children. Curiously, Mr. Russell, following the filing of the Petition to Modify, ceased the private schooling for his children, cut back their Christmas to \$100-200 per child, and otherwise maintained a more subdued financial environment for his children. (T.T. 26, 3-22; 27, 16-25; 28, 1-17, 25; 29, 146, 14-22). He even stated in his answer to Interrogatory No. 7, that his two children Carley Russell and Taylor Russell "attends" public school when the Interrogatory question No. 7 specifically asked for every educational establishment attended. These children had been in private schools the prior two years. (T.T. 27, 18-25; 28, 1-25; 29, 1-13). The lower court did not comment on this inconsistency.

**c. Quantified evidence of need and additional marshaling**

It is submitted that the dicta in Black v. Barney, 2000 Ut. App. 369 (unpublished opinion, Dec. 21, 2000), where the court looks to the quantitative evidence of the child's reasonable needs, has been satisfied in the case at bar. However, recognizing the heavy burden required to marshal the evidence in an area within the court's discretion, as required in Hagan v. Hagan, 910 P.2d 478, 481 (Ut. App. 1991), and West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Ut. App. 1991), the following is submitted:

The Court:

You just can't take four hundred and forty eight hundred and twenty three dollars and divide it by

The Evidence:

Respondent's income tax Return for 2000. Line item 33 shows adjusted gross income of \$440,823, which, if divided



twelve and say that's your income (T.T. at 144, 13-16) Findings of Fact para.16) You got to turn the page to see all his business expenses on a sub chapter s. Those are all legitimate deductions and they're right here in, right here in the schedules... (T.T 144, 16-22, Findings of Fact para. 16)

I don't have a clue what was going on back in 1999 when the present order was agreed to between the parties. So really I'm required to deny the petition on that basis alone. (T.T. 147, 23-24; 148, 1-3, Findings of Fact para. 21)

So I see no reason to believe that Mr. Russell's income has gone from what it was determined to be \$10,599 in 1999 to thirteen hundred thirteen thousand to fifteen thousand or whatever figure he gave me was. That's some increase but that increase as standing by itself has nothing to do as to whether or child support increases solely upon need if there's a difference in the need between 1999 and now whatever the figure he gave me was. (T.T. 144, 23-24; 145, 1-6; Findings of Fact, Para. 15)

by twelve months, equals \$36,735.25. Trial Ex. 4.

The deductions in the schedules are already deducted. The adjusted gross income is \$440,823.

Evidence was presented showing an enormous increase in the relative income of Petitioner from the 1999 order, thus triggering the mechanism of the "reasonable needs of the child" on a case by case basis required by statute and precedent. (See Reinhart and Ut. Code Ann. 78-45-7.12, also Ball v. Peterson, 912 P.2d 1006, 1014 (Ut. App. 1996)

This part simply doesn't appear to make any sense. The \$10,599 figure is inaccurate since the 1999 figure was \$10,549 (R.167-173) but the more crucial part is not this minor inaccuracy but the Court is somewhat unclear as to whether it accepts this figure. It appears to, but this figure is also wrong, since the 2000 income tax return shows adjusted gross income of over \$36,000 PER month, a much greater jump than the amount claimed by Mr. Russell. (T.T 48, 11-12) Additionally, Mr. Russell's testimony was that he made

"Twelve or thirteen thousand a month", T.T. 48, 11-12.

There's no reasonable explanation of how she's been covering this ongoing shortfall this \$450 a month for extracurricular activities which I just don't think's reasonable. (T.T. 146, 1-5; Findings of Fact, paras. 18, 19).

But I really have a little difficulty with the credibility of the Petitioner as to all these expenses

(T.T. 145, 21-23; Findings of Fact, para. 18).

"One of the factors I can look at what is being spent on the other children that Mr. Russell has. And he may be frugal. He may be frugal. And perhaps he is. And the figures he has listed between four and between five around five hundred dollars per child in his answers to his interrogatories doesn't include housing or food and utilities and all those things and obviously that's part of the needs of the child, to have a warm house and a place to live, those kinds of things. (T.T. 146, 14-22).

"I'm glad Mr. Wolfe is out there apparently willing to cough up the funds to pay for those, if in fact that's what's happening." (T.T. 145, 19-21)

See the canceled checks made out by Mr. Wolf, Trial Exhibits 21, 22. T.T. 132, 2-23; Exhibit 14, 133, 1-2)

Findings of Fact, para. 23 states, "The Court Determined that a better standard in regard to the reasonable needs of the child should be something similar to what Respondent is paying for his other children. The Respondent listed about \$462-578 per month per child in his answers to his interrogatories which doesn't include housing or food or utilities." Shouldn't this then be the standard utilized by the court and thus was not this standard met? Especially since the monthly expense for extracurricular activities of Marquel was \$450 (See Findings of Fact not accepting \$450 as reasonable, which is

para. 19. See T.T. of  
Petitioner, T.T. 21,22.  
See canceled checks of  
Wolfe, Trial Ex.23

Also, the Court ignored  
Tr. Exhibit 6, which were Mr.  
Russell's answer to  
interrogatories, and answer 8  
indicated he spent \$462 per  
month on Holden Russell, \$481  
per month on Carley Russell,  
and \$578 per month for Taylor  
Russell.

She is involved in soccer  
to the extent that she  
travels all over the country  
participating in soccer  
tournaments (T.T. 145, 15-17)  
And travels almost monthly  
(T.T. 146, 12-13; Findings of  
Fact 17, 18 and 19)

Trial Exhibit 14, indicates a  
Tournament in St.  
George, Ut., Vail, Co., Las  
Vegas, NV.

"I don't believe he makes  
\$36,000 a month" (T.T. 133,  
12-13)

2000 Income Tax Return  
Shows, on the first page  
Line item 7, wages, etc.  
\$60,497 (See p. E to show  
P for Partnership in  
TS&G, Inc., and S for  
Shareholder for Automatic  
Then \$694 Schedule B,  
less business loss of  
\$3,000 and S corp.

"You can't just divide that  
by twelve. You can't just  
divide that by twelve,  
divide that by twelve".

Schedule E,  
P. 2, total income of  
\$375,522  
and lastly, gambling  
winnings of \$987.

(T.T. 133, 20-21).

The total amount  
is \$440,823. Dividing that  
amount by 12 months as  
allowed by UCA § 78-45-7.5  
(5)(a), the monthly average  
Is exactly as represented  
to the court, which is  
\$36,735.25.

(T.T. 133, 23-24)

"There's a couple of expenses to operate that business"

[as to expenses} There was never any evidence as to expenses, except testimony standing alone, No documentation. (T.T. 134,1-3, 43, 1-17)

Mr. Russell stated that his income, before taxes, was \$376,000 (T.T. 48, 1-4).<sup>4</sup>

This is simply untrue. The 2000 1040 Income Tax Return for Mr. Russell clearly showed taxes deducted of \$120,095. (P.2, line item 40, "Tax".

"Well, that would be true if it was only one trip a year. But as you see from Exhibit 14, there are trips almost every, month. (T.T. 132, 21-23)

Trial Exhibit 14 acutally shows five trips from June, 2001 through April, 2003 they are to St. George, Ut., Las Vegas, Nv. and Vail, Co., for Marquel's soccer tournaments.

There's a Delta flight somewhere almost every month.

On Exhibit 14, there were two airline purchases over two years; one in Nov. 2002 and June, 2002.

#### d. Particular needs of Marquel P. Reddish

The trial exposed in some clarity the needs of Marquel P. Reddish. They are not only illustrated by Nichole Reddish's shortfall every month (T.T. Exhibit 17), but by the actual needs of Marquel, the minor child. Marquel's needs are, in particular, the actual ability to participate in skiing, dancing, piano and soccer, have use of a computer, a bike, being able to afford school lunch without having to receive school lunch assistance, to be able

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<sup>4</sup> This was undoubtedly rounded off from the 2000 Income Tax Return figure of \$375,522 referenced in line item 17 on the first page, which would be his Sub S share for the year.

to live in a real home as opposed to a rented home, to reach the maximum pinnacle of her intellectual capabilities, with either extra learning devices or a private school, and to be able to afford a college education. (T.T. 112, 1-24; 113, 1-24; 76, 10-19; 75, 17-24; 114, 5-24; 115, 1-24; 116, 1-19; 120, 1-11; 108, 3-12; 138, 1-23) Trial Exhibits 14, 21, 22 and 23).

In a general way, Marquel's needs are to be able to explore her talents within reasonable monetary constraints and to live, on a day to day basis, without having to be looking for contributions to her well being from outside of her immediate family.

The only way Marquel has been able to progress to the point that she has, wherein she has been a superior student and a gifted soccer athlete (T.T. 107, 10-20), is because of the financial support of Jeff Wolfe, a friend of the family. Mr. Wolfe has acted as her financial mentor since she was three years old, and has contributed an average of \$833 per month since, which is \$10,000 per year. (Tr. Exhibit 23). Without this contribution, Marquel would be severely limited in what she could or couldn't do. (T.T. 115, 19-21). She certainly has the same needs that the children of Mr. Russell, and he insured the children were enrolled (until this action was filed), in private schools, had gymnastics (at the cost of \$200 per month), lived in an \$856,000 home, ride in two late model vehicles, had use of a boat and provided seed money for college. (T.T. 40, 10-11).

e. Other jurisdictions.

In recent years there has been a trend in favor of recognizing that a child should share in the relative wealth of the parents. Almost all of the cases relate to the issue of income that exceeds the guidelines, and what the appropriate child support should thus be. In California, typically on the cutting edge of new law, the California Court of Appeals has held that children are entitled to be supported in a style and condition consonant with the position in society of their parents, and the parent's duty to support does not end with furnishing of mere necessities if the parent can afford more. White v. Marciano, 190 Cal. App. 3d 1026 (1987). In other jurisdictions: Child of wealthy parents are entitled to support commensurate with their parents' high income lifestyle, Galbis v. Nadal, 626 A.2d 26 (D.C. 1993), Children have every right to share in the good fortune of their parents Zak v. Zak, 629 So. 2d 187, (Fla. Dist. Ct. App. 1991), Children entitled to the same standard of living; \$3,000 per month for two children not out of line where dad has \$22,700 per month income, Bullock v. Bullock, 719 So. 2d 113 (La. Ct. App. 1998), There is an assumed amount of parent generosity in high income cases. Conway v. Conway, 10 Va. App. 653 S. E. 2d 464, (1990), and, Caplan v. Caplan, 364 N.J. Super. 68, 834 A. 2d 459 (App. Div. 2003), in high income cases, first, the reasonable needs of the children must be determined, guided by the principles of Isaacson; second, the ability of the

parties to generate earned income, in addition to unearned income, must be determined; third, upon determining the respective percentage of each party's net imputed earned and unearned income of their total combined net imputed earned and unearned income, those percentages shall be applied to determine each party's share of the maximum basic child support guidelines award for two children; finally, the maximum basic child support amount should be subtracted from the court-determined reasonable needs of the children to determine the remaining children's needs to be allocated between the parties. See also Pratt v. McCullough, 100 Ohio App. 3d 479, (1992), Archer v. Archer, 813 P.2d 1059, (Okla. 1991), Billion v. Billion, 553 N.W. 2d 226, (S.D. 1996), In re Gonzalez, 993 S.W. 2d 147 (Tex. Ct. App. 1999), Bagley v. Bagley, 98 Md. App. 18 (1993).

### III.

#### TRIAL COURT ERRED IN FAILING TO ORDER THE RESPONDENT TO PAY ONE HUNDRED PERCENT OF MEDICAL AND DENTAL INSURANCE AND COSTS

##### a. Financial disparity and medical costs.

Mr. Russell was found to have an income of \$20,000 in 1994, when the original order was entered. (R. 167-173, Findings of Fact, para.5). Because Ms. Reddish was unemployed, attending school and receiving State aid, there was no imputation of her income. (Id, para. 7, 13). With Mr. Russell's current gross income in the range of \$440,823 per year, which is \$36,333.67 per month, and Ms. Reddish's income of \$19,115 per year, or \$1,529.92 per month, there

is a monumental disparity of income. Ms. Reddish makes approximately 4% of Mr. Russell's income. Further, Mr. Russell pays more for his annual charitable contribution, which amount on his 2000 income tax return was \$31,897. In other words, he gifted more to charity than what Ms. Reddish made for the year. (Russell 2000 income tax return, line item 15, Schedule A, Itemized deductions; Ms. Reddish evidence of income for 2002 was \$19,515).

At trial, Ms. Reddish testified that she could not make it financially without contribution from Jeff Wolfe (T.T. 115, 19-21). She also testified that Marquel received subsidized lunches at school (T.T. 62, 13-24). Lately, she has incurred substantial expenses in the way of braces for Marquel. (R. 403, 407).

Although the original order in 1994 made a finding of imputed income for Mr. Russell in the way of \$20,000 per year, which is \$1,666.66 per month, with no income for Ms. Reddish because she was unemployed, attending school and on state aid, the parties stipulated that each would pay one-half of the uninsured medical and dental expenses. (R. 174-179). At that time, the differences in the party's incomes were not as pronounced. Another part of the 1994 order required both parties to secure insurance if it became available to them. (1994 Order, para. 2, R.174-179).

The 1999 upgrade essentially only increased child support. The other parts of the 1994 order remained the same.

There was a noticeable difference, however. Mr. Russell's



income had leapt to \$10,549 per month, while Ms. Reddish's income was a poverty level \$893 per month. (Child Support Worksheet for 1999 order).

Since the entry of the last order in 1999, Marquel has incurred substantial orthodontic costs. Mr. Russell paid his entire one-half fee, Ms. Reddish struggled. Both parties were ordered to secure insurance if it became available at their employment at a reasonable cost; Ms. Reddish works for an employer, Mr. Russell is and has been, self employed since approximately 1994. (R. 174-179). Mr. Russell could easily be self insured because of his income stream and assets. (Tr. Exhibit 4). His testimony was that he his medical and dental insurance "has been in place nine or ten months" prior to the date of trial, which was May 8, 2003. (T.T. 53, 4-5).

Had he put this insurance in place strictly in accordance with both the letter and the spirit of the order requiring insurance, it can be assumed, with Mr. Russell's earning capacity, that it ought to have been in place substantially sooner than nine or ten months before trial. He had the ability to provide insurance, Ms. Reddish did not. (Tr. Ex. 4, 17). He also, when it was finally implemented, it was paid for by his company, of which he is the sole shareholder. (T.T. 43, 6). He also, every month, deducted out the statutory allowance of his one-half portion of the cost of medical insurance for Marquel, even though his company paid the premium and he did not. (T.T. 38, 10-16).

The trial court simply ignored this issue, which was raised in Petitioner's opening statement, as well in testimony. (T.T. T.T.38, 10-16).

Ms. Reddish's expenses overpower her income (Tr. Ex. 17), leaving her a monthly loss without contribution from Jeff Wolfe. Because of these substantial and material changes of circumstances by both parties, where in particular Ms. Reddish has a need and Mr. Russell has the overwhelming ability to pay, the Court erred in not ordering Mr. Russell to assume the entirety of the medical costs for the parties' child Marquel.

#### **IV**

#### **THE LOWER COURT ERRED IN NOT AWARDING THE PETITIONER HER ATTORNEY'S FEES**

Utah Code Ann. § 30-3-3 allows for the court awarding attorney's fees. The lower graciously did not award the prevailing party, the Respondent, attorney's fees, considering the ability to pay as opposed to entitlement. (T.T. 151,1-3).

Should the Petitioner succeed in the appeal, fees and costs should be awarded to her. Factored into this as well should be the recalcitrance of the Respondent with a history of having to make Petitioner file Motions to Compel (three), respond to a non-meritorious motion for summary judgment (in which fees were awarded to the Petitioner), all the while being in a superior financial condition which strapped the resources of the Petitioner. Respondent put up road blocks from the very first filing for

Paternity, required HLA blood tests, he has never voluntarily offered to pay additional child support even though his income skyrocketed, he continued to pay a paltry \$224 for as long as he could. It took the involvement of the Office of Recovery Services, the only attorney Petitioner could afford, to bring Mr. Russell to the table. For a history of Respondent's lack of cooperation, please see Statement of Facts 1, 2, 4, 6, 10, 14, 15, 16, 18, 20, 21, 22, 23, 25, 31 and 32).

**CONCLUSION**

For the reasons previously set forth, this Court should grant judgment in favor of the Appellant as prayed.

DATED this 10<sup>th</sup> day of August, 2004.

MORRISON & MORRISON, P.C.

A handwritten signature in black ink, appearing to read "Grant W. P. Morrison", is written over a horizontal line.

Grant W. P. Morrison  
Attorney for Appellant  
and Petitioner Nichole  
P. Reddish

CERTIFICATE OF SERVICE

This is to certify that I caused to be mailed, first class postage prepaid, two true and correct copies of the foregoing Appellant Brief, to:

Scott B. Dopp, Esq.  
King & King  
Attorneys at Law  
330 North Main Street  
Kaysville, Utah 84037

on the 11<sup>th</sup> day of August, 2004.

A handwritten signature in black ink, reading "Michele Reddish". The signature is written in a cursive style with a horizontal line underneath the name.

## **ADDENDUM**

1. Findings of Fact and Conclusions of Law  
December 11, 2003
2. Order  
December 11, 2003
3. Activities and Expenses  
Trial Exhibit 14
4. Child Support Worksheet for 1999 Order  
Trial Exhibit 3
5. Appellee's 1997 Income Tax Return,  
used to calculate 1999 child support  
Trial Exhibit 2
6. Appellee's 1999 Income Tax Return  
Trial Exhibit 1
7. Statutes

**FILED DISTRICT COURT**  
Third Judicial District

DEC 11 2003

By *Emily Morrison* SALT LAKE COUNTY  
Deputy Clerk

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**IN THE THIRD JUDICIAL DISTRICT COURT**  
**SALT LAKE COUNTY, STATE OF UTAH**

NICHOLE P. REDDISH,

Petitioner,

vs.

SAMUEL H. RUSSELL,

Respondent.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Case No. 910902274

Judge Timothy R. Hanson

The above entitled matter came on regularly to be heard by the Court on Thursday May 8, 2003 at 10:00 a.m. with the Honorable Timothy R. Hanson, District Court Judge, presiding, at which time Petitioner appeared in person by and through her Attorney Grant W. P. Morrison, and Respondent appeared in person by and through his Attorney, Scott Dopp. A Trial was held on Petitioner's Verified Petition to Modify Order. The Court heard, considered, and weighed the evidence presented by the parties.

Based on the foregoing, and good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Jurisdiction and venue are proper.

2. Petitioner and Respondent were never married.
3. Petitioner was awarded custody of the parties' minor child, Marquel Pauline K. Reddish, born August 15, 1991, via an Order of the Court on April 15, 1994.
4. Respondent was ordered to pay \$224.00 per month for child support in 1994.
5. In 1999 the Office of Recovery Services modified Respondent's child support amount to \$728.00 per month, based upon the Respondent's increased income.
6. Petitioner's Verified Petition to Modify Order was based upon an argument that Respondent's income had substantially changed since the 1999 Order in which Respondent used his 1997 income instead of his current income and/or that the reasonable needs of the minor child were not being met at the current amount of \$728.00 per month, <sup>as</sup> <sup>and</sup> indicated in the amended Petition and original Petition.
7. Petitioner called witnesses and introduced evidence attempting to prove a substantial increase in Respondent's income and that the reasonable needs of the minor child were not being met at the child support amount of \$728.00 per month.
8. Child support was calculated in 1999 using Respondent's 1997 income of \$10,549.00 per month and Petitioner's imputed income of \$893 00 per month.
9. When the parties' combined income exceeds \$10,000.00, the child support is based upon the reasonable needs of the child.
10. The Legislature and Appellate Courts do not define what constitutes the reasonable needs of a child.

11. Respondent's income is irrelevant. The Court must first determine the reasonable needs of the child.

12. Once the Court determines the reasonable needs of the child the Court must then look to the parties' incomes to determine whether the incomes can meet the child's needs.

13. Respondent is currently paying \$728.00 per month for child support, one-half of orthodontic bills, one-half of non-covered medical bills and one-half of daycare bills. Respondent is current on all of these expenses. These amounts were based upon the parties' past agreement.

14. In order to modify the child support amount the Court must first determine whether there has been a substantial change in circumstances since the original decree of previous modification. The parties last modified child support in 1999.

15. The Court must also determine whether the needs of the child have increased since the last modification in 1999.

16. Respondent's income has not increased from \$10,549.00 (granted by order in 1999) to \$448,023.00 annually (present) because you just can't take Respondent's tax return and divide the return by the number of months in a year. Respondent is responsible to pay taxes and there are also business expenses to calculate, which are indicated in his return on the schedules. Respondent's income has increased, but that increase as standing by itself has nothing to do with whether or not there is a difference in the child's needs from 1999 to the present.



17. The minor child in question is an eleven year old girl. The Court has trouble believing that it is physically possible for the minor child to participate in all the activities presented to the Court.

18. The Court had difficulties with Petitioner's credibility as to the expenses of the activities for the minor child. The Exhibits are not accurate. There are no reasonable explanations for how these expenses are being covered.

19. \$450.00 per month for extracurricular activities is not reasonable.

20. Child support is not designed to insure that the minor child lives in the same kind of house that Respondent's other children live in. This is not an alimony case.

21. No evidence was presented to show that the reasonable needs of the child had changed since the 1999 modification.

22. The reasonable needs of the child are being met.

23. The Court determined that a better standard in regard to the reasonable needs of the child should be something similar to what Respondent is paying for his other children. The Respondent listed about \$500.00 per month per child in his answers to his interrogatories which doesn't include housing or food or utilities.

24. Respondent pays \$50.00 per month into a college trust fund for the minor children in his present home. Respondent shall provide \$50.00 per month into a college trust fund for the parties' minor child.

25. If the Respondent chooses to have a relationship with this child in the future, there is going to have to be some notice, something the parties can agree to. There

would be some kind of limited contact to start with, in a fashion that is not adverse to the child, and it should be phased in and agreed to between the parties. If it cannot be agreed upon then it is to be mediated with someone who is experienced in child visitation because there has been a long period of non-contact between the Respondent and child.

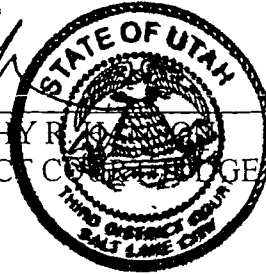
### CONCLUSIONS OF LAW

1. Pursuant to Section 30-3-5, Utah Code Annotated, this court has continuing jurisdiction to modify child support.
2. Petitioner's Verified Petition to Modify Order is denied.
3. Respondent shall continue to pay the amount of \$728.00 per month for child support.
4. Respondent shall establish a college trust fund for the parties' minor child and pay \$50.00 per month into the fund until the minor child reaches the age of eighteen. Said fund shall not vest until the minor child reaches the age of eighteen.
5. Respondent is the prevailing party, however, due to equitable considerations Respondent's request for attorneys' fees is denied.
6. Visitation will occur if desired by Respondent. There must be notice agreeable to both parties, and limited contact at first in a fashion not adverse to the child. It should then be phased in as agreed between the parties, and if an agreement cannot be reached it should be mediated with an experienced child visitation mediator.

DATED this 11 day of December, 2003.

BY THE COURT:

Timothy R. ...  
TIMOTHY R. ...  
DISTRICT COURT JUDGE



APPROVED AS TO FORM:

Grant W. P. Morrison

GRANT W. P. MORRISON  
Attorney for Petitioner

MAILING CERTIFICATE

I certify I mailed, postage prepaid, by first class mail, a true and correct copy  
of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following,  
this 3 day of December, 2003:

GRANT W. P. MORRISON  
352 East 900 South  
Salt Lake City, Utah 84111

Farrell Helm

**FILED DISTRICT COURT**  
Third Judicial District

DEC 11 2003

SALT LAKE COUNTY  
By *Emily J. Thompson* Clerk

SCOTT DOPP, No. 8957  
KING & KING  
Attorneys for Respondent  
330 North Main Street  
Kaysville, Utah 84037  
Telephone: (801) 543-2288  
Facsimile: (801) 543-2272

**IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH**

NICHOLE P. REDDISH,

Petitioner,

vs.

SAMUEL H. RUSSELL,

Respondent.

**ORDER**

Case No. 910902274

Judge Timothy R. Hanson

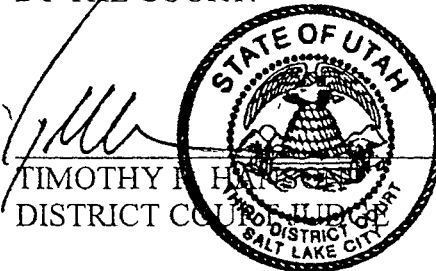
The Court, having made its Findings of Fact and Conclusions of Law, hereby  
adjudges, decrees, and orders as follows:

1. Petitioner's Verified Petition to Modify Order is denied.
2. Respondent shall continue to pay the amount of \$728.00 per month for  
child support.
3. Respondent shall establish a college trust fund for the parties' minor  
child and pay \$50.00 per month into the fund until the minor child reaches the age of  
eighteen. Said fund shall not vest until the minor child reaches the age of eighteen.
4. Respondent is the prevailing party, however, due to equitable  
considerations Respondent's request for attorneys' fees is denied.

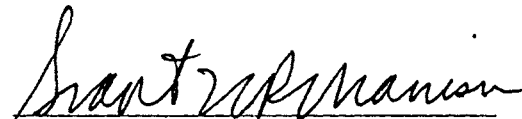
5. Visitation shall occur if desired by Respondent. There must be notice agreeable to both parties and limited contact at first in a fashion not adverse to the child. It should then be phased in as agreed by the parties and if an agreement cannot be reached then it should be mediated with an experienced child visitation mediator.

DATED this 11 day of Dec, 2003.

BY THE COURT:



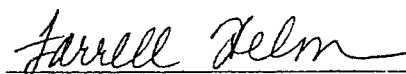
APPROVED AS TO FORM:

  
GRANT W. P. MORRISON  
Attorney for Petitioner

MAILING CERTIFICATE

I certify I mailed, postage prepaid, by first class mail, a true and correct copy of the foregoing ORDER to the following, this 3 day of December, 2003:

GRANT W. P. MORRISON  
352 East 900 South  
Salt Lake City, Utah 84111



# 14

Marquels extracurricular activity expenses.

#### JUNE 2001

SDSA Reg.	70.00
UFC Reg.	50.00
USA Gymnastics	20.00
Uniform	75.00
Total	=215.00

#### JULY 2001

July Fee	35.00
Mayors Cup	
Tournament	30.00
total	= 65.00

#### AUGUST 2001

Aug. Fee	35.00
Soccer Camp	55.00
Dance Registration	35.00
total	= 125.00

#### SEPTEMBER 2001

Sept. Fee	35.00
Dance Sept. Tuition	74.00
Dance Costume	75.00
Team Sweat shirt	20.00
Alternative jersey	10.00
Warm ups	70.00
Soccer bag	25.00
Socks, straps &	
Lace holder	17.00
TOTAL	326.00

#### OCTOBER 2001

Dance Impressions	132.60	#661 WM
Soccer uniform	72.80	#640 WM
Oct. Dance Tuition	74.00	
Oct. Soccer Fee	35.00	
JAZZ SHOES	36.74	

total = \$351.14

NOVEMBER 2001

NOV. DANCE	74.00	
SOCCER	25.00	
Soccer video	16.00	#670 WM
Books	10.90	#669 WM
Books	4.95	#668 WM
total = \$130.85		

DECEMBER 2001

December dance	77.60	#681WM
Soccer Dec. & Jan.	50.00	#689WM
3 on 3 tournament	25.00	
Tournament	200.00	
out of town		
soccer training	8.00	#695 WM
Soccer training	8.00	#694 WM
SKI pass 5 <sup>th</sup> grade	10.00	#711 WM

TOTAL = \$378.60

JANUARY 2002

Dance	67.60	#715 WM
-------	-------	---------

Total = \$67.60

MARCH 2002

Dance	67.61	#788 WM
3 V 3	22.00	#763 WM
PTA	9.00	#765 WM

TOTAL = \$98.61

APRIL 2002

Dance Comp	10.00	#794 WM
Class Photo	16.00	#789 WM

Total = \$26.00

#### May 2002

Dance Impressions	33.39	#001
Soccer Reg	75.00	
UFC	50.00	
Mark Davis 3v3	22.00	#010
Puppy	350.00	#101
UFC soccer	6.00	#806WM
total =	536.39	

#### June 2002

U of U camp	85.00	#
UFC	58.00	#105
Delta	194.00	debit
SDSA Reg.	72.00	#008
UFC Reg.	50.00	#009
Delta child fee	40.00	debit
Humane Society	28	debit
Clothes	72.00	debit
Scoreboard	58.51	debit
TOTAL	\$657.51	

#### July 2002

UFC	58.00	#112
Mark Davis 3 v 3	40.00	#113
Vail tournament room	300.00	visa
Travel To Vail	150.00	visa
Braces down pymnt	1280.00	visa & #117
Med.	15.00	#109
Shoes	33.02	#



Child Care	180.00	
TOTAL	\$2,056.02	

Aug. 2002

Tournament Mayors Cup	35.00	#126
Humane Society	42.50	debit
Soccer shootout	15.00	
Propix soccer photos	20.00	#131
total = \$112.50		

Sept. 2002

Soccer	52.00	#138	
Fund raiser soccer	35.00		
School fund	20.00	#139	
Piano	34.00	#137	
Dentist	88.00		
School lunch	6.75 X 2 = 13.50		#149
Class photo	16.00	#152	
SBO shirt	12.00	#160	
Soccer shirt for tournament	12.00		
PTA	3.5		
Dr. Coombs	15.00	#135	
TOTAL	\$301.00		

October 2002

Soccer indoor fee	26.00	#158
Finishing clinic	5.00	included #158
Soccer training fee	58.10	#163
Kennel for her dog	100.00	#164*
Piano	45.00	#159
Jr. Jazz basketball	53.00	#161
Soccer activity	20.00	

School Fund Raiser	63.00	
Friends B-day (3)	45.00	
Indoor soccer league	50.00	#167
School lunch	6.75	#168
Coat	42.00	#170
TOTAL	\$513.85	

#### November 2002

Piano	45.00	#171
Soccer fee	52.26	#175
Dr. foster pet supplies	46.97	debit
Jazz game Marquel	17.00	debit
Jr. Jazz	32.00	#177
Crafts for Marquel	52.87	debit
Soccer plus	10.64	debit
School lunch	13.50	#181
Tournament Vegas Hotel	188.22	VISA
Tournament Vegas Travel	150.00	debit
Tournament Vegas Food	100.00	debit

total = \$708.46

#### December 2002

Soccer fee	66.56	#167 *
Soccer Int.	31.18	debit
Piano	45.00	#185
Allen Nunn pers training	10.00	#187
Allen Nunn pers training	20.00	cash
total	\$106.18	

#### January 2003

Braces	51.00	#190
School lunch	6.75 x 2	#193
Soccer fee	55.00	#200
Dance	52.00	#205
total	\$171.50	

## February 2003

Piano & books	60.00	#208
Med	15.00	#210
Soccer fee	50.00	#211
School lunch	13.50	#212
Hotel St. George		
Tournament	200.00	VISA
Travel	75.00	debit
Food tournament	100.00	debit
Tournament sweats	56.00	#192 *
Braces	51.00	#206
Basketball photo	14.00	#207
total = \$634.50		

## March 2003

Piano	45.00	#218
Dance	33.00	#219
Soccer Transport to Boise (Tammy Richards)	20.00	#220
Soccer	45.00	#221
Soccer Hotel Boise (Scott McQuarrie)	20.00	#223
Braces	51.00	VISA
Tournament Las Vegas - airfare	161.00	VISA
Tournament Las Vegas - meals	40.00	cash
School Lunch	13.50	#228

TOTAL = \$428.50

## APRIL 2003

Dance	47.00	#229
Piano	45.00	#230.
Soccer Fee	35.00	#231
braces	44.00	VISA
Lagoon pass	76.63	#232

Deposit for Soccer camp	100.00
Hawaii	1100.00

IN THE Third DISTRICT COURT  
Salt Lake COUNTY, STATE OF UTAH

Nichole Reddish,

vs.

CHILD SUPPORT OBLIGATION WORKSHEET  
(SOLE CUSTODY AND PATERNITY)

Samuel H. Russell

Civil No. 940902274 PA

	MOTHER	FATHER	COMBINED
Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.	//////////	//////////	1
Enter the father's and mother's gross monthly income. Refer to Instructions for definition of income.	\$ 893 <sup>①</sup>	\$ 10,549 <sup>②</sup>	//////////
Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	- 0	- 0	//////////
Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	- 0	- 0	//////////
OPTIONAL: Enter the amount from Line 12 of the children in Present Home Worksheet for either parent.	- 0	- 1,922	//////////
Subtract Lines 2b, 2c, and 2d from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 893	\$ 8,627	\$ 9,520
Take the COMBINED figure in Line 3 and the number children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	//////////	//////////	\$ 803
Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	9.4 %	90.6 %	//////////
Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 75	\$ 728	//////////

7. BASE CHILD SUPPORT AWARD: Bring down the amount in Line 6 for the Obligor Parent or enter the amount from the Low Income Table.

\$ 728

Based on imputed minimum wage <sup>②</sup> Average min. w. 1997

Which parent is the obligor? ( ) Mother (X) Father

Is the support award the same as the guideline amount in line 7? (X) Yes ( ) No  
If NO, enter the amount ordered: \$ \_\_\_\_\_, and answer number 10.

What were the reasons stated by the Court for the deviation?

- ( ) property settlement
- ( ) excessive debts of the marriage
- ( ) absence of need of the custodial parent
- ( ) other: \_\_\_\_\_

IN THE Third DISTRICT COURTSalt Lake COUNTY, STATE OF UTAHNichole Reddish,

VS.

Samuel H. RussellWORKSHEET TO DETERMINE FATHER'S  
OBLIGATION TO CHILDREN IN HIS  
PRESENT HOMECivil No. 910902274ATami Russell

OTHER PARENT NAME

	FATHER	OTHER PARENT	COMBINED
1. Enter the # of natural and adopted children of the father and the other parent.	///////// /////////	///////// /////////	3
2a. Enter the father's and the other parent's gross monthly income. Refer to Instructions for definition.	\$ 10,549	\$ 0	///////// /////////
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	- 0	- 0	///////// /////////
2c. Enter pre-existing ordered child support. (Do not enter obligations ordered for children in this case.)	- 0	- 0	///////// /////////
3. Subtract Lines 2b, and 2c from 2a. This is the Adjusted Monthly Gross for child support purposes.	\$ 10,549	\$ 0	\$ 10,549
4. Take the COMBINED figure in Line 3 and the number of children in Line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here.	///////// ///////// /////////	///////// ///////// /////////	\$ 1,808
5. Divide each parent's adjusted monthly gross in Line 3 by the COMBINED adjusted monthly gross in Line 3.	100 %	0 %	///////// /////////
6. Multiply Line 4 by Line 5 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 1,808	\$ 0	///////// /////////
7. Enter the amount of the children's portion of the insurance premium actually paid.	///////// /////////	///////// /////////	\$ 228
8. Enter the monthly work or training related child care expense for the children in Line 1.	///////// /////////	///////// /////////	\$ 0

9. FATHER'S SHARE OF BASE CHILD SUPPORT AMOUNT FOR THE CHILDREN IN LINE 1. Enter the amount for the father from line 6.	\$ 1,808
10. FATHER'S SHARE OF CHILDREN'S INSURANCE PREMIUM FOR THE CHILDREN IN LINE 1. Multiply Line 7 by .50, and enter the result here.	\$ 114
11. FATHER'S SHARE OF WORK OR TRAINING RELATED CHILD CARE EXPENSES FOR THE CHILDREN IN LINE 1. Multiply Line 8 by .50, and enter the result here.	\$ 0
12. FATHER'S SHARE OF TOTAL CHILD SUPPORT OBLIGATION TO THE CHILDREN IN LINE 1. Add lines 9, 10, and 11. This amount may be used to adjust the father's gross income on the sole, split, or joint custody worksheets.	\$ 1,922

WORKSHEET VERIFICATION AFFIDAVIT

STATE OF UTAH )  
                  : ss.  
COUNTY OF DAVIS )

COMES NOW Gary P. Kirkham, and  
being first duly sworn, states under oath as follows:

1. I am an employee of the Office of Recovery Services  
in the Utah Department of Social Services.

2. As part of my duties in my employment, I have been  
assigned to work the child support collections case involving the  
persons designated as "Plaintiff" and "Defendant" in the attached  
document entitled "Child Support Obligation Worksheet."

3. As part of my duties in my employment, I have  
investigated the best available information regarding the income  
and expenses of Nichole Reddish in this case and the figures  
for said individual on the Worksheet are based on that information.

4. The figures on the Worksheet concerning the income  
and expenses of Samuel H. Russell are true and complete  
to the best of my knowledge and information and are based upon the  
best evidence presently available including year-to-date pay stubs,  
employer statements or the most recent year's tax returns.

5. To the best of my knowledge, the amount of child  
support requested on the "Child Support Obligation Worksheet" is  
consistent with the amount set forth in the Child Support  
Guidelines effective July 1, 1994.

DATED this 22<sup>nd</sup> day of June, 19 99.

Gary P. Kirkham  
INVESTIGATOR

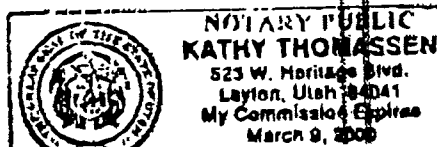
SUBSCRIBED AND SWORN TO before me this 22 day of  
June, 19 99.

Kathy Thomassen  
NOTARY PUBLIC  
Residing in: Davis Co

My Commission expires:

March 9, 2000

EXHIBIT "A"



For the year Jan 1 - Dec 31, 1997, or other tax year beginning

1997, ending

19

OMB No 1545-0074

L A B E L  H E R E	Your first name and initial <b>SAMUEL H. RUSSELL</b>	Last name <b>RUSSELL</b>	Your social security number <b>529-98-1688</b>
	If a joint return, spouse's first name and initial <b>TAMI J. RUSSELL</b>	Last name <b>RUSSELL</b>	Spouse's social security number <b>398-74-9035</b>
	Home address (number and street). If you have a P.O. box, see page 10 <b>154 E. CARRINGTON LANE</b>		For help finding line instructions, see pages 2 and 3 in the booklet.
	City, town or post office, state, and ZIP code. If you have a foreign address, see page 10 <b>CENTERVILLE, UT 84014</b>		
Campaign	Do you want \$3 to go to this fund? .....		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10)	If a joint return, does your spouse want \$3 to go to this fund? .....		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Status	1	Single
	2	<input checked="" type="checkbox"/> Married filing joint return (even if only one had income)
	3	Married filing separate return. Enter spouse's soc. sec. no. above & full name here ▶
	4	Head of household (with qualifying person). (See page 10) If the qualifying person is a child but not your dependent, enter this child's name here ▶
	5	Qualifying widow(er) with dependent child (year spouse died ▶ 19 ). (See page 10)

6a	<input checked="" type="checkbox"/> Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a .....	No. of boxes checked on 6a and 6b <b>2</b>				
	<input checked="" type="checkbox"/> Spouse .....					
c Dependents:	(1) First Name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) No. of mos lived in your home in 1997	No. of your children on 6c who
	TAYLOR K. RUSSELL		646-14-4883	CHILD	12	● lived with you <b>3</b>
	CARLEY A. RUSSELL		646-30-1212	CHILD	12	● did not live with you due to divorce or separation (see page 11)
	HOLDEN J. RUSSELL		646-38-9022	CHILD	4	
Dependents on 6c not entered above						
d Total number of exemptions claimed .....						Add numbers entered on lines above ▶ <b>5</b>

your 2, d are. not 2	7	Wages, salaries, tips, etc. Attach Form(s) W-2 .....	7	37,536	
	8a	Taxable interest. Attach Schedule B if required .....	8a	850	
	b	Tax-exempt interest. DO NOT include on line 8a .....	8b		
	9	Dividends. Attach Schedule B if required .....	9	72	
	10	Taxable refunds, credits, or offsets of state and local income taxes (see page 12) .....	10		
	11	Alimony received .....	11		
	12	Business income or (loss). Attach Schedule C or C-EZ .....	12		
	13	Capital gain or (loss). Attach Schedule D .....	13	-3,000	
	14	Other gains or (losses). Attach Form 4797 .....	14		
	but do not y payment se use 1-V.	15a	Total IRA distributions .... 15a	b Taxable amount (see pg. 13)	15b
16a		Total pensions and annuities 16a 13,738	b Taxable amount (see pg. 13)	16b	
17		Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E .....	17	91,131	
18		Farm income or (loss). Attach Schedule F .....	18		
19		Unemployment compensation .....	19		
20a		Social security benefits .... 20a	b Taxable amount (see pg. 14)	20b	
21		Other income. ....	21		
22		Add the amounts in the far right column for lines 7 through 21. This is your total income .....	22	126,589	
ed e, under nder child s with IC Inst.		23	IRA deduction (see page 16) .....	23	
		24	Medical savings account deduction. Attach Form 8853 .....	24	
	25	Moving expenses. Attach Form 3903 or 3903-F .....	25		
	26	One-half of self-employment tax. Attach Schedule SE .....	26		
	27	Self-employed health insurance deduction (see page 17) .....	27		
	28	Keogh and self-employed SEP and SIMPLE plans .....	28		
	29	Penalty on early withdrawal of savings .....	29		
	30a	Alimony paid. b Recipient's SSN ▶	30a		
	31	Add lines 23 through 30a .....	31	0	
	32	Subtract line 31 from line 22. This is your adjusted gross income .....	32	126,589	



**Tax Computation**

33	Amount from line 32 (adjusted gross income).....	33	126,58
34	a Check if: <input type="checkbox"/> You were 65 or older, <input type="checkbox"/> Blind; <input type="checkbox"/> Spouse was 65 or older, <input type="checkbox"/> Blind. Add the number of boxes checked above and enter the total here.....	34a	
	b If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see page 18 and check here.....	34b	<input type="checkbox"/>
35	Enter the larger of your <div style="border: 1px solid black; padding: 5px; display: inline-block;">                     Itemized deductions from Schedule A, line 28, OR                      Standard deduction shown below for your filing status. But see page 18 if you checked any box on line 34a or 34b or someone can claim you as a dependent.                      • Single - \$4,150    • Married filing jointly or Qualifying widow(er) - \$6,900                      • Head of household - \$6,050    • Married filing separately - \$3,450                 </div>	35	27,051
36	Subtract line 35 from line 33.....	36	99,531
37	If line 33 is \$90,900 or less, multiply \$2,650 by the total number of exemptions claimed on line 6d. If line 33 is over \$90,900, see the worksheet on page 19 for the amount to enter.....	37	13,250
38	Taxable income. Subtract line 37 from line 36 If line 37 is more than line 36, enter -0-.....	38	86,281
39	Tax. See page 19. Check if any tax from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972.....	39	18,801

If you want the IRS to figure your tax, see page 18

**Credits**

40	Credit for child and dependent care expenses. Att. Form 2441.....	40	
41	Credit for the elderly or the disabled. Attach Schedule R.....	41	
42	Adoption credit. Attach Form 8839.....	42	
43	Foreign tax credit. Attach Form 1116.....	43	
44	Other. Check if from: a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8396 c <input type="checkbox"/> Form 8801 d <input type="checkbox"/> Form (specify).....	44	
45	Add lines 40 through 44.....	45	
46	Subtract line 45 from line 39. If line 45 is more than line 39, enter -0-.....	46	18,801

**Other Taxes**

47	Self-employment tax. Att. Sch. SE.....	47	
48	Alternative minimum tax. Attach Form 6251.....	48	
49	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137.....	49	
50	Tax on qualified retirement plans (including IRAs) and MSAs. Attach Form 5329 if required.....	50	
51	Advance earned income credit payments from Form(s) W-2.....	51	
52	Household employment taxes. Attach Schedule H.....	52	
53	Add lines 46 through 52. This is your total tax.....	53	18,801

**Payments**

54	Federal income tax withheld from Forms W-2 and 1099.....	54	5,758
55	1997 estimated tax payments and amount applied from 1996 return.....	55	17,000
56	a Earned income credit. Att. Sch. EIC if you have a qualifying child. b Nontaxable earned income amt. <input type="checkbox"/> and type <input type="checkbox"/> NO.....	56a	
57	Amount paid with Form 4868 (request for extension).....	57	
58	Excess social security and RRTA tax withheld (see page 27).....	58	
59	Other payments. Check if from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136.....	59	
60	Add lines 54, 55, 56a, 57, 58, and 59. These are your total payments.....	60	22,758

**Refund**

61	If line 60 is more than line 53, subtract line 53 from line 60. This is the amount you OVERPAID.....	61	3,957
62a	Amount of line 61 you want REFUNDED TO YOU.....	62a	
	b Routing number <input type="text"/> c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
	d Account number <input type="text"/>		
63	Amount of line 61 you want APPLIED TO 1998 ESTIMATED TAX.....	63	3,957

**Amount You Owe**

64	If line 53 is more than line 60, subtract line 60 from line 53. This is the AMOUNT YOU OWE. For details on how to pay, see page 27.....	64	
65	Estimated tax penalty. Also include on line 64.....	65	

**Sign Here**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Keep a copy of this return for your records	Your signature	Date	Your occupation
	<input type="text"/>	<input type="text"/>	BUSINESSMAN
	Spouse's signature. If a joint return, BOTH must sign	Date	Spouse's occupation
	<input type="text"/>	<input type="text"/>	FLIGHT ATTENDANT

**Preparer's Use Only**

Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's social security no
<input type="text"/>	3/09/98		462-04-9899
Firm's name (or yours if self-employed) and address	EIN		
Valentine & Associates, Inc. 652 E. Mutton Hollow Road Knoxville, TN	84-1384179		
	ZIP code		

Copy C For EMPLOYEE'S RECORDS (See Notice on back of Copy B)			1997	OMB No 1545 0008
a Control number ID #	1 Wages tips other comp 37500.00	2 Federal income tax withheld 5757.50		
b Employer's ID number 87-0487189	3 Social security wages 39000.00	4 Social security tax withheld 2418.00		
	5 Medicare wages and tips 39000.00	6 Medicare tax withheld 565.50		
c Employer's name address and ZIP code AUTOMATIC CAR CREDIT INC.  1497 N. MAIN STREET LAYTON UT 84041				
d Employee's social security number 529-98-1688				
e Employee's name address and ZIP code SAMUEL H. RUSSELL 154 E. CARRINGTON LANE CENTERVILLE UT 84014				
7 Social security tips	8 Allocated tips	9 Advance EIC payment		
10 Dependent care benefits	11 Nonqualified plans	12 Benefits included in box 1		
13 See Instrs for box 13 S 1500.00	14 Other			
15 Statutory employee	Deceased	Pens on plan	Legal rep	High d emp
UT Y70429				
37500.00		2540.00		
16 State Employer's state ID #	17 State wages tips etc	18 State income tax		
19 Locality name	20 Local wages tips etc	21 Local income tax		

Form W-2 Wage and Tax Statement Dept of the Treasury - IRS 39 1754529  
This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty/other sanction may be imposed on you if this income is taxable and you fail to report it.

Form W-2 Wage and Tax Statement 1997		OMB No. 1545 0008		Department of the Treasury—Internal Revenue Service	
a Control number 79934	b Employer's name address and ZIP code DELTA AIR LINES, INC P. O. BOX 20706 ATLANTA GA 30320 404-715-6834		c Employee's name address and ZIP code RUSSELL, TAMI J 030648100 154 EAST CARRINGTON LN CENTERVILLE UT 84014		d Social security number 58-0218548
This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty/other sanction may be imposed on you if this income is taxable and you fail to report it.		1 Wages tips other compensation 36.27		2 Federal income tax withheld 5757.50	
		3 Social security wages 36.27		4 Social security tax withheld 2.25	
		5 Medicare wages and tips 36.27		6 Medicare tax withheld .53	
		7 Social security tips		8 Allocated tips	
		9 Advance EIC payment		10 Dependent care benefits	
		11 Nonqualified plans		12 Benefits included in Box 1	
		13 See Instrs for Box 13		14 Other	
15 Statutory employee		Deceased		Pension plan	
UT Y70429				X	
37500.00		2540.00		36.27	
16 State Employer's state ID #		17 State wages tips etc		18 State income tax	
19 Locality name		20 Local wages tips etc		21 Local income tax	

For the year Jan. 1 - Dec. 31, 1999, or other tax year beginning		1999, ending		OMB No. 1545-0046			
Your first name and initial	Last name			Your social security number			
	SAMUEL H. RUSSELL			529-98-1688			
	If a joint return, spouse's first name and initial			Spouse's social security number			
	TAMI J. RUSSELL			398-74-9035			
Home address (number and street). If you have a P.O. box, see page 18.				Apt. no.			
154 E. CARRINGTON LANE							
City, town or post office, state, and ZIP code. If you have a foreign address, see page 18.							
CENTERVILLE, UT 84014							
Do you want \$3 to go to this fund?				Yes	No		
If a joint return, does your spouse want \$3 to go to this fund?					X		
1 Single							
2 X Married filing joint return (even if only one had income)							
3 Married filing separate return. Enter spouse's soc. sec. no. above & full name here							
4 Head of household (with qualifying person). (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here							
5 Qualifying widow(er) with dependent child (year spouse died > 19 ). (See page 18.)							
6a X Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a.				No. of boxes checked on 6a and 6b			
b X Spouse				2			
c Dependents:		(1) First Name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) Check if qualifying child for child tax credit (see page 19)	No. of your children on 6c who:
TAYLOR K. RUSSELL		646-14-4883	SON	X			lived with you
CARLEY A. RUSSELL		646-30-1212	DAUGHTER	X			did not live with you due to divorce or separation (see page 19)
HOLDEN J. RUSSELL		646-38-9022	SON	X			
d Total number of exemptions claimed							5
7 Wages, salaries, tips, etc. Attach Form(s) W-2		7					36,497
8a Taxable interest. Attach Schedule B if required		8a					2,151
b Tax-exempt interest. DO NOT include on line 8a.		8b					
9 Ordinary dividends. Attach Schedule B if required		9					551
10 Taxable refunds, credits, or offsets of state and local income taxes (see page 21)		10					
11 Alimony received		11					
12 Business income or (loss). Attach Schedule C or C-EZ		12					
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here		13					-1,534
14 Other gains or (losses). Attach Form 4797		14					
15a Total IRA distributions		15a					
b Taxable amount (see pg. 22)		15b					
16a Total pensions and annuities		16a					
b Taxable amount (see pg. 22)		16b					
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17					337,435
18 Farm income or (loss). Attach Schedule F		18					
19 Unemployment compensation		19					
20a Social security benefits		20a					
b Taxable amount (see pg. 24)		20b					
21 Other income. Form 8814		21					91
22 Add the amounts in the far right column for lines 7 through 21. This is your total income		22					375,191
23 IRA deduction (see page 26)		23					
24 Student loan interest deduction (see page 26)		24					
25 Medical savings account deduction. Attach Form 8853		25					
26 Moving expenses. Attach Form 3903		26					
27 One-half of self-employment tax. Attach Schedule SE		27					
28 Self-employed health insurance deduction (see page 26)		28					
29 Keogh and self-employed SEP and SIMPLE plans		29					
30 Penalty on early withdrawal of savings		30					78
31a Alimony paid. b Recipient's SSN		31a					
32 Add lines 23 through 31a		32					

**Tax and Credits**

Standard Deduction for Most People

Single: \$4,300

Head of household: \$5,350

Married filing jointly or Qualifying widow(er): \$7,200

Married filing separately: \$3,600.

34	Amount from line 33 (adjusted gross income) .....	34	375,1
35	a Check if: <input type="checkbox"/> You were 65 or older, <input type="checkbox"/> Blind; <input type="checkbox"/> Spouse was 65 or older, <input type="checkbox"/> Blind. Add the number of boxes checked above and enter the total here.....> 35a		
	b If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see page 30 and check here.....> 35b <input type="checkbox"/>		
36	Enter your itemized deductions from Schedule A, line 28, OR standard deduction shown on the left. But see page 30 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent .....	36	48,50
37	Subtract line 36 from line 34.....	37	326,60
38	If line 34 is \$94,975 or less, multiply \$2,750 by the total number of exemptions claimed on line 6d. If line 34 is over \$94,975, see the worksheet on page 31 for the amount to enter.....	38	
39	Taxable income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-	39	326,60
40	Tax (see page 31). Check if any tax is from a <input checked="" type="checkbox"/> Form(s) 9814 b <input type="checkbox"/> Form 4972 .....	40	102,60
41	Credit for child and dependent care expenses. Att. Form 2441 .....	41	
42	Credit for the elderly or the disabled. Attach Schedule R .....	42	
43	Child tax credit (see page 33).....	43	
44	Education credits. Attach Form 8863 .....	44	
45	Adoption credit. Attach Form 8839 .....	45	
46	Foreign tax credit. Attach Form 1116 if required .....	46	
47	Other. Check if from a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8396 c <input type="checkbox"/> Form 8801 d <input type="checkbox"/> Form (specify) .....	47	
48	Add lines 41 through 47. These are your total credits.....	48	
49	Subtract line 48 from line 40. If line 48 is more than line 40, enter -0- .....	49	102,60

**Other Taxes**

50	Self-employment tax. Att. Sch. SE .....	50	
51	Alternative minimum tax. Attach Form 6251 .....	51	
52	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 .....	52	
53	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required.....	53	
54	Advance earned income credit payments from Form(s) W-2.....	54	
55	Household employment taxes. Attach Schedule H.....	55	
56	Add lines 49 through 55. This is your total tax .....	56	102,60

**Payments**

57	Federal income tax withheld from Forms W-2 and 1099 .....	57	6,101
58	1999 estimated tax payments and amount applied from 1998 return .....	58	45,000
59	a Earned income credit. Att. Sch. EIC if you have a qualifying child. b Nontaxable earned income: amt. > <input type="text"/> and type > <input type="text"/> No <input type="checkbox"/> 59a		
60	Additional child tax credit. Attach Form 8812 .....	60	
61	Amount paid with request for extension to file (see page 48) .....	61	40,000
62	Excess social security and RRTA tax withheld (see page 48) .....	62	
63	Other payments. Check if from a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 .....	63	
64	Add lines 57, 58, 59a, and 60 through 63. These are your total payments.....>	64	91,101

**Refund**

65	If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you OVERPAID .....	65	
66a	Amount of line 65 you want REFUNDED TO YOU .....	66a	

Have it directly deposited! See page 48 and fill in sub. 66c, and 66d.

b Routing number  > c Type: ☐ Checking ☐ Savings

d Account number

67 Amount of line 65 you want APPLIED TO 2000 ESTIMATED TAX > 67

**Amount You Owe**

68	If line 56 is more than line 64, subtract line 64 from line 56. This is the AMOUNT YOU OWE. For details on how to pay, see page 49 .....	68	11,502
69	Estimated tax penalty. Also include on line 68 .....	69	

**Sign Here**

Join return? page 16, 1a copy your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation <b>BUSINESSMAN</b>	Daytime telephone number (optional)
Spouse's signature. If a joint return, BOTH must sign.	Date	Spouse's occupation <b>HOME</b>	

**Paid****Preparer's**

Preparer's signature

**Ron R. Valentine, CPA**

Date

Check if self-employed ☐

Preparer's SSN or PTIN

**P00026770**

Firm's name (or yours)

**VALENTINE & ASSOCIATES, INC.**

EIN

**84-1384179**

SCHEDULE A & B  
(Form 1040)

## Schedule A - Itemized Deductions

OMB No. 1545-0074

1999

Attachment  
Sequence No. 07Department of the Treasury  
Internal Revenue Service (see  
instructions on Form 1040)

▶ Attach to Form 1040.

▶ See instructions for Schedules A and B (Form 1040).

SAMUEL H. AND TAMI J. RUSSELL

Your social security number  
529-98-1688

1 Medical and dental expenses (see page A-1) .....		1		
2 Enter amount from Form 1040, line 34 .....		2	7,075	
3 Multiply line 2 above by 7.5% (.075) .....		3		
4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0- .....		4		0
5 State and local income taxes .....		5	13,996	
6 Real estate taxes (see page A-2) .....		6	4,511	
7 Personal property taxes .....		7		
8 Other taxes. List type and amount .....		8		
9 Add lines 5 through 8 .....		9		18,507
10 Home mortgage interest and points reported on Form 1098 .....		10	19,402	
11 Home mortgage interest not reported on Form 1098. If paid to the person from whom you bought the home, see page A-3 & show that person's name, ID no. & address .....		11		
12 Points not reported on Form 1098. See page A-3 .....		12	2,750	
13 Investment interest. Attach Form 4852, if required. (See page A-4) .....		13		
14 Add lines 10 through 13 .....		14		22,152
15 Gifts by cash or check. If any gift of \$250 or more, see pg. A-4. Other than by cash or check. If any gift of \$250 or more, see page A-4. You MUST attach Form 2863 if over \$500 .....		15	12,800	
16 Carryover from prior year .....		16	2,500	
17 Add lines 15 through 16 .....		17		15,300
18 Casualty or theft loss(es). Attach Form 4684. (See page A-5) .....		18		0
19 Unreimbursed employee expenses - job travel, union dues, job education, etc. You MUST attach Form 2106 or 2106-EZ if required. (See page A-5) .....		19		
20 Tax preparation fees .....		20		
21 Other expenses - investment, safe deposit box, etc. List type and amount .....		21		
22 Add lines 20 through 21 .....		22		
23 Enter amount from Form 1040, line 34 .....		23		
24 Multiply line 24 above by 2% (.02) .....		24		
25 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0- .....		25		0
26 Other - from list on page A-8. List type and amount .....		26		
27 Add lines 14 through 25 .....		27		0
28 Is Form 1040, line 34, over \$128,000 (over \$63,000 if married filing separately)?		Reduction		
<input type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 38.		-7,455		

48 504

Schedule A &amp; B (Form 1040) 1999

Name(s) shown on Form 1040. Do not enter name and social security number if shown on other side.

OMB No. 1545-0074

Your social security number

SAMUEL H. AND TAMI J. RUSSELL

529-98-1688

## Schedule B - Interest and Ordinary Dividends

Attach  
Schedule

**Part I Interest**

1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also, show that buyer's social security number and address ▶

**Automatic Car Credit Inc.**  
**BARNES BANK**  
**DELTA EMPLOYEE CREDIT UNION**

**Part II Ordinary Dividends**

5 List name of payer. Include only ordinary dividends. If you received any capital gain distributions, see the instructions for Form 1040, line 13. ▶

**DEAN WITTER**  
**DEAN WITTER**

**Part III Foreign Accounts and Assets**

7a At any time during 1999, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1

**7b If "Yes," enter the name of foreign country ▶**

**7c During 1999, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See page B-2**

FPA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Schedule B (Form

SCHEDULE D  
(Form 1040)

## Capital Gains and Losses

OMB No. 1545-0074

1999

Attachment  
Sequence No. 12Department of the Treasury  
Internal Revenue Service (99)  
Not shown on Form 1040

- ▶ Attach to Form 1040. ▶ See instructions for Schedule D (Form 1040).  
▶ Use Schedule D-1 for more space to list transactions for lines 1 and 8.

Your social security number  
529-98-1688

SAMUEL H. AND TAMI J. RUSSELL

## Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less

(a) Description of property (Example, 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-8)	(e) Cost or other basis (see page D-8)	(f) GAIN or LOSS Subtract (e) from (d)
HOME STORE.COM	200 SHARES				
	10/22/99	10/22/99	7,638	6,976	662
TRITON PCS 25	SHARES				
	10/27/99	10/28/99	841	575	266
TRITON PCS 25	SHARES				
	10/27/99	11/05/99	916	575	341

Enter your short-term totals, if any, from  
Schedule D-1, line 2

Total short-term sales price amounts.

Add column (d) of lines 1 and 2

Short-term gain from Form 8252 and short-term gain (or loss) from  
Forms 4684, 6781, and 8824

Net short-term gain (or loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1

Short-term capital loss carryover. Enter the amount, if any, from line 8 of your  
1998 Capital Loss Carryover Worksheet

Net short-term capital gain (or loss). Combine lines 1 through 6 in column (f)

## Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year

(a) Description of property (Example, 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-8)	(e) Cost or other basis (see page D-8)	(f) GAIN or LOSS Subtract (e) from (d)	(g) SEPARATE GAIN or LOSS (see instructions)
GLOBAL MARINE	500 SHARES					
	3/10/97	12/01/99	7,628	11,650	-4,022	
WUVEEN MUNICIPAL	800 SHARES					
	3/10/97	10/22/99	6,509	6,600	-91	
UNIT EIF S&L	20462 SHARES					
	3/28/98	3/29/99	20,278	20,278	0	

Enter your long-term totals, if any, from  
Schedule D-1, line 8

Total long-term sales price amounts.

Add column (d) of lines 8 and 9

Gain from Form 4797, Part I; long-term gain from Forms 2439 and 8252;  
and long-term gain (or loss) from Forms 4684, 6781, and 8824

Net long-term gain (or loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1

Capital gain distributions. See page D-1

Long-term capital loss carryover. Enter in both columns (f) and (g) the amount,  
if any, from line 13 of your 1998 Capital Loss Carryover Worksheet

Combine lines 8 through 14 in column (g)

Net long-term capital gain (or loss). Combine lines 8 through 14 in column (f)

Next: Go to Part III on the back.

28% Rate Gain or Loss includes all "collectibles gains and losses" (as defined on page D-5) and up to 50% of the eligible gain on qualified small business stock (see page D-4).

Schedule D (Form 1040) 1999

Schedule D (Form 1040) 1999 SAMUEL H. AND TAMI J. RUSSELL

529-98-1688

## Part I Summary of Parts I and II

Combine lines 7 and 16. If a loss, go to line 18. If a gain, enter the gain on Form 1040, line 13	17
Next: Complete Form 1040 through line 36. Then, go to Part IV to figure your tax it:	
• Both lines 16 and 17 are gains, and	
• Form 1040, line 36, is more than zero.	
18 If line 17 is a loss, enter here and as a (loss) on Form 1040, line 13, the smaller of these losses:	18
• The loss on line 17; or	
• (\$3,000) or, if married filing separately, (\$1,500)	
Next: Skip Part IV below. Instead, complete Form 1040 through line 37. Then, complete the Capital Loss Carryover Worksheet on page D-6 f:	
• The loss on line 17 exceeds the loss on line 18, or	
• Form 1040, line 37, is a loss.	

## Part II Tax Computation Using Maximum Capital Gains Rates

19 Enter your taxable income from Form 1040, line 39	19
20 Enter the smaller of line 18 or line 17 of Schedule D	20
21 If you are filing Form 4962, enter the amount from Form 4962, line 4e	21
22 Subtract line 21 from line 20. If zero or less, enter -0-	22
23 Combine lines 7 and 16. If zero or less, enter -0-	23
24 Enter the smaller of line 16 or line 23, but not less than zero	24
25 Enter your uncovered section 1250 gain, if any, from line 16 of the worksheet on page D-7	25
26 Add lines 24 and 25	26
27 Subtract line 26 from line 22. If zero or less, enter -0-	27
28 Subtract line 27 from line 19. If zero or less, enter -0-	28
29 Enter the smaller of:	
• The amount on line 19, or	
• \$26,750 if single; \$43,050 if married filing jointly or qualifying widow(er);	
• \$21,525 if married filing separately; or \$34,650 if head of household	
30 Enter the smaller of line 28 or line 29	30
31 Subtract line 22 from line 19. If zero or less, enter -0-	31
32 Enter the larger of line 30 or line 31	32
33 Figure the tax on the amount on line 32. Use the Tax Table or Tax Rate Schedules, whichever applies.	33
Note: If line 29 is less than line 28, go to line 38.	
34 Enter the amount from line 29	34
35 Enter the amount from line 28	35
36 Subtract line 35 from line 34. If zero or less, enter -0-	36
37 Multiply line 36 by 10% (.10)	37
Note: If line 27 is more than zero and equal to line 36, go to line 52.	
38 Enter the smaller of line 19 or line 27	38
39 Enter the amount from line 36	39
40 Subtract line 39 from line 38	40
41 Multiply line 40 by 20% (.20)	41
Note: If line 25 is zero or blank, skip lines 42 through 47 and read the note above line 48.	
42 Enter the smaller of line 22 or line 26	42
43 Add lines 22 and 32	43
44 Enter the amount from line 19	44
45 Subtract line 44 from line 43. If zero or less, enter -0-	45
46 Subtract line 45 from line 42. If zero or less, enter -0-	46
47 Multiply line 46 by 25% (.25)	47
Note: If line 24 is zero or blank, go to line 52.	
48 Enter the amount from line 19	48
49 Add lines 32, 36, 40, and 48	49
50 Subtract line 49 from line 48	50
51 Multiply line 50 by 28% (.28)	51
52 Add lines 33, 37, 41, 47, and 51	52
53 Figure the tax on the amount on line 19. Use the Tax Table or Tax Rate Schedules, whichever applies	53



Form **4562** **Depreciation and Amortization**  
(Including Information on Listed Property)

OMB No. 1545-0072  
**1999**  
Attachment  
Sequence No. **07**

Department of the Treasury  
Internal Revenue Service (IRS)

▶ See separate instructions. ▶ Attach this form to your return.

Name(s) shown on return  
**SAMUEL H. AND TAMI J. RUSSELL**

Identifying number  
**529-98-1688**

Business or activity to which this form relates

**Part I - Summary**

**Section A - Election To Expense Certain Tangible Property (Section 179)** (Note: If you have any "listed property," complete Part IV before you complete Part I.)

1 Maximum dollar limitation. If an enterprise zone business, see page 2 of the instructions	1	\$19,000
2 Total cost of section 179 property placed in service. See page 2 of the instructions	2	13,595
3 Threshold cost of section 179 property before reduction in limitation	3	\$200,000
4 Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0
5 Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see page 2 of the instructions	5	19,000

6 (a) Description of property	(b) Cost (business use only)	(c) Elected cost
From K-1		13,595
7 Listed property. Enter amount from line 27	7	0
8 Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	13,595
9 Tentative deduction. Enter the smaller of line 5 or line 8	9	13,595
10 Carryover of disallowed deduction from 1998. See page 2 of the instructions	10	0
11 Business income limitation. Enter the smaller of business income (not less than zero) or line 9 (see instructions)	11	19,000
12 Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	13,595
13 Carryover of disallowed deduction to 2000. Add lines 9 and 10, less line 12	13	0

Note: Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

**MACRS Depreciation For Assets Placed in Service ONLY During Your 1999 Tax Year (Do Not Include Listed Property.)**

**Section A - General Asset Account Election**

14 If you are making the election under section 168(i)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box. See page 3 of the instructions. ☐

**Section B - General Depreciation System (GDS)** (See page 3 of the instructions.)

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
15a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs	MM	S/L	
			27.5 yrs	MM	S/L	
i Nonresidential real property			39 yrs	MM	S/L	
				MM	S/L	

**Section C - Alternative Depreciation System (ADS)** (See page 5 of the instructions.)

(a) Class life	(b) Month and year placed in service	(c) Basis for depreciation (business investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
16a Class life					S/L	
b 12-year			12 yrs		S/L	
c 40-year			40 yrs	MM	S/L	

**Other Depreciation (Do Not Include Listed Property.)** (See page 5 of the instructions.)

17 GDS and ADS deductions for assets placed in service in tax years beginning before 1999	17	
18 Property subject to section 168(f)(1) election	18	
19 ACRS and other depreciation	19	

**Part IV - Summary** (See page 6 of the instructions.)

20 Listed property. Enter amount from line 26	20	
21 Total. Add deductions on line 12, lines 15 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships & S corporations - see instructions	21	

Form **4562** **Depreciation and Amortization**  
(Including Information on Listed Property)

OMB No. 1545-0072  
**1999**  
Attachment  
Sequence No. **07**

Department of the Treasury  
Internal Revenue Service (IRS)

▶ See separate instructions. ▶ Attach this form to your return.

Name(s) shown on return  
**SAMUEL H. AND TAMI J. RUSSELL**

Identifying number  
**529-98-1**

Business or activity to which this form relates

**Schedule E - COMMERCIAL PROPERTY**

**Section A - Election To Expense Certain Tangible Property (Section 179)** (Note: If you have any "listed property," complete Part V before you complete Part I.)

1 Maximum dollar limitation. If an enterprise zone business, see page 2 of the instructions	1	\$1
2 Total cost of section 179 property placed in service. See page 2 of the instructions	2	
3 Threshold cost of section 179 property before reduction in limitation	3	\$200,000
4 Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5 Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see page 2 of the instructions	5	

6 (a) Description of property	(b) Cost (business use only)	(c) Elected cost
7 Listed property. Enter amount from line 27	7	
8 Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9 Tentative deduction. Enter the smaller of line 5 or line 8	9	
10 Carryover of disallowed deduction from 1998. See page 2 of the instructions	10	
11 Business income limitation. Enter the smaller of business income (not less than zero) or line 9 (see instructions)	11	
12 Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13 Carryover of disallowed deduction to 2000. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

**MACRS Depreciation For Assets Placed in Service ONLY During Your 1999 Tax Year (Do Not Include Listed Property.)**

**Section A - General Asset Account Election**

14 If you are making the election under section 168(i)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box. See page 3 of the instructions. ☐

**Section B - General Depreciation System (GDS)** (See page 3 of the instructions.)

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
15a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs	MM	S/L	
			27.5 yrs	MM	S/L	
i Nonresidential real property	6/01/99	105,000	39 yrs	MM	S/L	
				MM	S/L	

**Section C - Alternative Depreciation System (ADS)** (See page 5 of the instructions.)

(a) Class life	(b) Month and year placed in service	(c) Basis for depreciation (business investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
16a Class life					S/L	
b 12-year			12 yrs		S/L	
c 40-year			40 yrs	MM	S/L	

**Other Depreciation (Do Not Include Listed Property.)** (See page 5 of the instructions.)

17 GDS and ADS deductions for assets placed in service in tax years beginning before 1999	17	
18 Property subject to section 168(f)(1) election	18	
19 ACRS and other depreciation	19	

**Part IV - Summary** (See page 6 of the instructions.)

20 Listed property. Enter amount from line 26	20	
21 Total. Add deductions on line 12, lines 15 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships & S corporations - see instructions	21	



Form **4868**Application for Automatic Extension of Time  
To File U.S. Individual Income Tax Return

OMB No. 1545-0048

1999

Department of the Treasury  
Internal Revenue Service

For calendar year 1999, or other tax year beginning

1999 ending

Identification  
Your name(s) (see instructions)SAMUEL H. RUSSELL  
TAMI J. RUSSELL  
VALENTINE & ASSOCIATES, INC.Address (see instructions)  
652 E. MUTTON HOLLOW ROAD  
Day, town or post office, state, and ZIP code

KAYSVILLE, UT 84037

Your social security number

3

529-98-1688

398-74-9035

Complete ONLY if filing Gift/GST Tax Return

This form also extends the time for filing a gift or generation-skipping transfer (GST) tax return if you file a calendar (not fiscal) year income tax return. Enter your gift or GST tax payment(s) in Part IV and:

Check this box ☐ if you are requesting a gift or GST tax return extension.Check this box ☐ if your spouse is requesting a gift or GST tax return extension.

Filing deadline may result in correspondence if Form 706 or 709-A is not filed.

## Individual Income Taxes

4 Total tax liability on your income tax return for 1999 .....\$ 91,101

5 Total 1999 payments ..... 51,101

6 Balance. Subtract 5 from 4 ..... 40,000

## PART II Gift/GST Tax - If you are not filing a gift or GST tax return, go to Part V now. See the instructions.

7 Your gift or GST tax payment .... \$

8 Your spouse's gift/GST tax payment

9 Total ..... 40,000

10 Amount you are paying ..... 40,000

If line 10 is less than line 9, you may be liable for interest and penalties. See page 3.

Make your check payable to the "United States Treasury"  
and mail Form 4868 with your payment to:Internal Revenue Service  
P.O. Box 7122  
San Francisco, CA 94120-7122Form **8283**

(Rev. October 1998)

## Noncash Charitable Contributions

▶ Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.

▶ See separate instructions.

OMB No. 1545

Attachment  
Sequence No.

Name(s) shown on your income tax return

SAMUEL H. AND TAMI J. RUSSELL

Identifying number

529-98-1688

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A - List in this section only items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also, list certain publicly traded securities even if the deduction is over \$5,000 (see instructions).

## PART I Information on Donated Property - If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) Description of donated property
A	DESERET INDUSTRIES 2048 WASHINGTON BLVD. OGDEN, UT, 84401	MISC HOUSEHOLD ITEMS AND CLOTH
B	ARC OF UTAH 3135 S. HARRISON BLVD. OGDEN, UTAH, 84403	MISC HOUSEHOLD ITEMS AND CLOTH
C		
D		
E		

Note: If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (d), (e), and (f).

	(a) Date of the contribution	(b) Date acquired by donor (mo., yr.)	(c) How acquired by donor	(d) Donor's cost or adjusted basis	(e) Fair market value	(f) Method used to determine market value
A	Various	1/99	Purchase	2,100	700	Thrift Shop
B	Various	Various	Purchase	5,400	1,800	Thrift Shop
C						
D						
E						

## PART II Other information - Complete line 2 if you gave less than an entire interest in property listed in Part I. Complete line 3 if restrictions were attached to a contribution listed in Part I.

- 2 If, during the year, you contributed less than the entire interest in the property, complete lines a - c.
- a Enter the letter from Part I that identifies the property ▶ . If Part I applies to more than one property, attach a separate statement.
- b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ (2) For any prior tax years ▶

- c Name and address of each organization to which any such contribution was made in a prior year (complete only if different than the donee organization above):
- Name of charitable organization (donee)

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

- d For tangible property, enter the place where the property is located or kept ▶
- e Name of any person, other than the donee organization, having actual possession of the property ▶

- 3 If conditions were attached to any contribution listed in Part I, answer questions a - c and attach the required statement (see instructions).

- a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? .....
- b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?

rm <b>8814</b>	<b>Parents' Election To Report Child's Interest and Dividends</b>	OMB NO. 1545-1124 <b>1999</b> Attachment Sequence No. <b>40</b>
Department of the Treasury Internal Revenue Service (use only if shown on your return)		See instructions below and on back. Attach to parents' Form 1040 or Form 1040NR.
<b>SAMUEL H. AND TAMI J. RUSSELL</b>		Your social security number <b>529-98-1688</b>
Caution: The Federal income tax on your child's income, including capital gain distributions may be less if you file a separate tax return for the child instead of making this election. This is because you cannot take certain tax benefits that your child could take on his or her own return. For details, see Tax Benefits or May Not Take on the back.		
A Child's name (first, initial, and last)	B Child's social security number	
<b>CARLEY A. RUSSELL</b>	<b>646-30-1212</b>	
C If more than one Form 8814 is attached, check here <input type="checkbox"/>		
<b>Part I Child's Interest and Dividends To Report on Your Return</b>		
1a Enter your child's taxable interest. If this amount is different from the amounts shown on the child's Forms 1099-INT and 1099-DIV, see the instructions.		
	1a	
b Enter your child's tax-exempt interest. DO NOT include this amount on line 1a.		
1b		
2 Enter your child's ordinary dividends, including any Alaska Permanent Fund dividends. If your child received any ordinary dividends as a nominee, see the instructions.		
2		183
3 Enter your child's capital gain distributions. If your child received any capital gain distributions as a nominee, see the instructions.		
3		2,618
4 Add lines 1a, 2, and 3. If the total is \$1,400 or less, skip lines 5 and 6 and go to line 7. If the total is \$7,000 or more, do not file this form. Your child must file his or her own return to report the income.		
4		2,801
5 Base amount.		
5		1,400 00
6 Subtract line 5 from line 4. If you checked the box on line C above or if you entered an amount on line 3, see the instructions. Also, include this amount in the total on Form 1040, line 21, or Form 1040NR, line 21. In the space next to line 21, enter "Form 8814" and show the amount. Go to line 7 below. CGD ..... 1,310.		
6		91
<b>Part II Tax on the First \$1,400 of Child's Interest and Dividends</b>		
7 Amount not taxed.		
7		700 00
8 Subtract line 7 from line 4. If the result is zero or less, enter -0-.		
8		2,101
9 Tax. Is the amount on line 8 less than \$700?		
<input checked="" type="checkbox"/> No. Enter \$105 here and see the Note below.		
<input type="checkbox"/> Yes. Multiply line 8 by 15% (.15). Enter the result here and see the Note below.		
9		105
Note: If you checked the box on line C above, see the instructions. Otherwise, include the amount from line 9 in the tax you enter on Form 1040, line 40, or Form 1040NR, line 39. Be sure to check box 8 on Form 1040, line 40, or Form 1040NR, line 39.		



**Tax and Credits**

34	Amount from line 33 (adjusted gross income) .....	34	440,81
35a	Check if: <input type="checkbox"/> You were 65 or older, <input type="checkbox"/> Blind; <input type="checkbox"/> Spouse was 65 or older, <input type="checkbox"/> Blind. Add the number of boxes checked above and enter the total here .....	35a	
35b	If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien, see page 31 and check here .....	35b	
36	Enter your itemized deductions from Schedule A, line 28, or standard deduction shown on the left. But see page 31 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent .....	36	68,51
37	Subtract line 36 from line 34 .....	37	372,31
38	If line 34 is \$96,700 or less, multiply \$2,800 by the total number of exemptions claimed on line 6d. If line 34 is over \$96,700, see the worksheet on page 32 for the amount to enter .....	38	
39	Taxable income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0- .....	39	372,31
40	Tax (see page 32). Check if any tax is from a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 .....	40	120,11
41	Alternative minimum tax. Attach Form 6251 .....	41	
42	Add lines 40 and 41 .....	42	120,11
43	Foreign tax credit. Attach Form 1118 if required .....	43	5
44	Credit for child and dependent care expenses. Att. Form 2441 .....	44	
45	Credit for the elderly or the disabled. Attach Schedule R .....	45	
46	Education credits. Attach Form 8863 .....	46	
47	Child tax credit (see page 38) .....	47	
48	Adoption credit. Attach Form 8839 .....	48	
49	Other. Check if from a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8396 c <input type="checkbox"/> Form 8801 d <input type="checkbox"/> Form (specify) .....	49	
50	Add lines 43 through 49. These are your total credits .....	50	
51	Subtract line 50 from line 42. If line 50 is more than line 42, enter -0- .....	51	120,01

**Other Taxes**

52	Self-employment tax. Att. Sch. SE .....	52	
53	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 .....	53	
54	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required .....	54	
55	Advance earned income credit payments from Form(s) W-2 .....	55	
56	Household employment taxes. Attach Schedule H .....	56	
57	Add lines 51 through 56. This is your total tax .....	57	120,01

**Payments**

If you have a qualifying child, attach Schedule EIC.

58	Federal income tax withheld from Forms W-2 and 1099 .....	58	13,039
59	2000 estimated tax payments and amount applied from 1999 return .....	59	60,000
60a	Earned income credit (EIC) .....	60a	
60b	Nontaxable earned income: amt. <input type="checkbox"/> No .....	60b	
61	Excess social security and RRTA tax withheld (see page 50) .....	61	
62	Additional child tax credit. Attach Form 8812 .....	62	
63	Amount paid with request for extension to file (see page 50) .....	63	18,000
64	Other payments. Check if from a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 .....	64	
65	Add lines 58, 59, 60a, and 61 through 64. These are your total payments .....	65	91,01

**Refund**

Have it directly deposited! See page 30 and fill in 67b, 67c, and 67d.

66	If line 65 is more than line 57, subtract line 57 from line 65. This is the amount you overpaid .....	66	
67a	Amount of line 66 you want refunded to you .....	67a	
67b	Routing number <input type="text"/> .....	67b	
67c	Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings .....	67c	
67d	Account number <input type="text"/> .....	67d	
68	Amount of line 66 you want applied to your 2001 estimated tax .....	68	

**Amount You Owe**

69	If line 57 is more than line 65, subtract line 65 from line 57. This is the amount you owe. For details on how to pay, see page 51 .....	69	31,71
70	Estimated tax penalty. Also include on line 69 .....	70	2,696

**Sign Here**

Joint return? See page 10. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, the true, correct, and complete Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			
Your signature	Date	Your occupation	Daytime phone number
<input type="text"/>	<input type="text"/>	BUSINESSMAN	
Spouse's signature. If a joint return, both must sign	Date	Spouse's occupation	May the IRS discuss this with the preparer shown (see page 52)? <input checked="" type="checkbox"/> Yes
<input type="text"/>	<input type="text"/>	HOME	

**Paid****Preparer's**

Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Ron R. Valentine, CPA	11/28/01		P00026770
Firm's name (or yours)	Valentine & Associates, Inc.		EIN 84-1384179
452 E. Mutton Hollow Road			

SCHEDULES A&B  
(Form 1040)

## Schedule A - Itemized Deductions

OMB No. 1545-0074

2000

Attachment  
Sequence No. 07

▶ Attach to Form 1040. ▶ See instructions for Schedules A and B (Form 1040).

Department of the Treasury  
Internal Revenue Service (IRS)  
Name(s) shown on Form 1040

SAMUEL H. AND TAMI J. RUSSELL

Your social security number

529-98-1688

Caution. Do not include expenses reimbursed or paid by others.				
1	Medical and dental expenses (see page A-2)	1		
2	Enter amount from Form 1040, line 34	2		
3	Multiply line 2 above by 7.5% (.075)	3		
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-	4		0
5	State and local income taxes	5	23,582	
6	Real estate taxes (see page A-2)	6	3,374	
7	Personal property taxes	7		
8	Other taxes. List type and amount	8		
9	Add lines 5 through 8	9		26,956
10	Home mortgage interest and points reported on Form 1098	10	15,035	
11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see page A-3 and show that person's name, ID no. & address	11		
12	Points not reported to you on Form 1098. See pg. A-3	12		
13	Investment interest. Attach Form 4952, if required. (See page A-3.)	13		
14	Add lines 10 through 13	14		16,035
15	Gifts by cash or check. If any gift of \$250 or more, see pg. A-4	15	31,897	
16	Other than by cash or check. If any gift of \$250 or more, see page A-4. You must attach Form 8263 if over \$500	16	3,000	
17	Carryover from prior year	17		
18	Add lines 15 through 17	18		34,897
19	Casualty or theft loss(es). Attach Form 4684. (See page A-6.)	19		0
20	Unreimbursed employee expenses - job travel, union dues, job education, etc. You must attach Form 2106 or 2106-EZ if required. (See page A-5.)	20		
21	Tax preparation fees	21		
22	Other expenses - investment, safe deposit box, etc. List type and amount	22		
23	Add lines 20 through 22	23		
24	Enter amount from Form 1040, line 34	24		
25	Multiply line 24 above by 2% (.02)	25		
26	Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26		0
27	Other - from list on page A-8. List type and amount	27		
	Gambling Losses to Extent of Winnings		987	
28	Is Form 1040, line 34, over \$120,950 (over \$64,475 if married filing separately)? <input type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 36.	28	Reduction -9,356	68,519

Schedule A&amp;B (Form 1040) 2000

OMB No. 1545-0074

Name(s) shown on Form 1040. Do not enter name and social security number if shown on other side.

Your social security number

SAMUEL H. AND TAMI J. RUSSELL

529-98-1688

## Schedule B - Interest and Ordinary Dividends

Attachment  
Sequence

Note. If you had over \$400 in taxable interest, you must also complete Part III.

Part I Interest	Amount
1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also, show that buyer's social security number and address ▶ AUTOMATIC CAR CREDIT, INC. BARNES BANKING CO. BARNES BANKING CO. DELTA EMPLOYEES CREDIT UNION	
2 Add the amounts on line 1	2
3 Excludable interest on series EE and I U.S. savings bonds issued after 1989 from Form 8815, line 14. You must attach Form 8816.	3
4 Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a	4

Note. If you had over \$400 in ordinary dividends, you must also complete Part III.

Part II Ordinary Dividends	Amount
5 List name of payer. Include only ordinary dividends. If you received any capital gain distributions, see the instructions for Form 1040, line 13. ▶ DEAN WITTER REYNOLDS	
6 Add the amounts on line 5. Enter the total here and on Form 1040, line 9	6

Part III  
Foreign Accounts and Investments  
You must complete this part if you (a) had over \$400 of interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

7a At any time during 2000, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1	
b If "Yes," enter the name of foreign country ▶	
8 During 2000, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See page B-2	

XFA For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule B (Form

SCHEDULE D  
(Form 1040)

## Capital Gains and Losses

OMB No. 1545-0076

2000

Attachment  
Sequence No. 12Department of the Treasury  
Internal Revenue Service (99)

- ▶ Attach to Form 1040. ▶ See instructions for Schedule D (Form 1040).  
▶ Use Schedule D-1 for more space to list transactions for lines 1 and 8.

(a) shown on Form 1040

Your social security number  
529-98-1688

JUEL H. AND TAMI J. RUSSELL

## Short-Term Capital Gains and Losses - Assets Held One Year or Less

(a) Description of property (Sample, 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6)	(e) Cost or other basis (see page D-6)	(f) Gain or (loss) Subtract (e) from (d)
COM 150 SHRS	3/02/00	3/02/00	12,935	12,158	777
COM 200 SHRS	3/03/00	3/03/00	16,847	16,211	636
COM 50 SHRS	3/02/00	3/02/00	4,362	4,053	309
RLD COM 100 SHRS	3/13/00	5/18/00	3,953	4,652	-699
Enter your short-term totals, if any, from Schedule D-1, line 2	2		8,324		-2,607
Total short-term sales price amounts. Add column (d) of lines 1 and 2	3		46,421		

Short-term gain from Form 8252 and short-term gain or (loss) from  
Forms 4684, 6781, and 8824

Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1

Short-term capital loss carryover. Enter the amount, if any, from line 8 of your  
1999 Capital Loss Carryover Worksheet

Net short-term capital gain or (loss). Combine column (f) of lines 1 through 6

## Long-Term Capital Gains and Losses - Assets Held More Than One Year

(a) Description of property (Sample, 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-6)	(e) Cost or other basis (see page D-6)	(f) Gain or (loss) Subtract (e) from (d)	(g) 28% rate gain or (loss) (see instructions below)
JEVEN MUN 2200 SHRS	3/10/97	1/07/00	16,990	21,651	-4,661	
ID RESIDENCE	5/01/99	6/26/00	423,500	423,500	0	
Enter your long-term totals, if any, from Schedule D-1, line 9	8					
Total long-term sales price amounts. Add column (d) of lines 8 and 9	10		440,490			

Gain from Form 4797, Part I; long-term gain from Forms 2439 and 8252;  
and long-term gain or (loss) from Forms 4684, 6781, and 8824

Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1

Capital gain distributions. See page D-1

Long-term capital loss carryover. Enter in both columns (f) and (g) the amount,  
if any, from line 13 of your 1999 Capital Loss Carryover Worksheet

Combine column (g) of lines 8 through 14

Net long-term capital gain or (loss). Combine column (f) of lines 8 through 14

Next: Go to Part III on the back.

\* 28% rate gain or loss includes all "collectibles gains and losses" (as defined on page D-6) and up to 50% of the eligible gain on qualified small business  
stock (see page D-4).

or Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule D (Form 1040) 2000

Schedule D (Form 1040) 2000 SAMUEL H. AND TAMI J. RUSSELL

529-98-16

## Part I Summary of Parts I and II

Combine lines 7 and 16. If a loss, go to line 18. If a gain, enter the gain on Form 1040, line 13	17
Next: Complete Form 1040 through line 39. Then, go to Part IV to figure your tax liability:	
• Both lines 16 and 17 are gains and	
• Form 1040, line 39, is more than zero.	
Otherwise, stop here.	
18 If line 17 is a loss, enter here and as a (loss) on Form 1040, line 13, the smaller of these losses:	
• The loss on line 17 or	
• (\$3,000) or, if married filing separately, (\$1,500)	
Next: Skip Part IV below. Instead, complete Form 1040 through line 37. Then, complete the Capital Loss Carryover Worksheet on page D-6 if:	
• The loss on line 17 exceeds the loss on line 18 or	
• Form 1040, line 37, is a loss	

## Part IV Tax Computation Using Maximum Capital Gains Rates

19 Enter your taxable income from Form 1040, line 39	19
20 Enter the smaller of line 16 or line 17 of Schedule D	20
21 If you are filing Form 4962, enter the amount from Form 4962, line 4e	21
22 Subtract line 21 from line 20. If zero or less, enter -0-	22
23 Combine lines 7 and 15. If zero or less, enter -0-	23
24 Enter the smaller of line 15 or line 23, but not less than zero	24
25 Enter your unrecaptured section 1250 gain, if any, from line 17 of the worksheet on page D-8	25
26 Add lines 24 and 25	26
27 Subtract line 26 from line 22. If zero or less, enter -0-	27
28 Subtract line 27 from line 19. If zero or less, enter -0-	28
29 Enter the smaller of:	
• The amount on line 19 or	
• \$28,250 if single; \$43,850 if married filing jointly or qualifying widow(er); \$21,925 if married filing separately; or \$35,150 if head of household	
30 Enter the smaller of line 25 or line 29	30
31 Subtract line 22 from line 19. If zero or less, enter -0-	31
32 Enter the larger of line 30 or line 31	32
33 Figure the tax on the amount on line 32. Use the Tax Table or Tax Rate Schedules, whichever applies. Note: If the amounts on lines 29 and 30 are the same, skip lines 34 through 37 and go to line 38.	33
34 Enter the amount from line 29	34
35 Enter the amount from line 30	35
36 Subtract line 35 from line 34	36
37 Multiply line 36 by 10% (.10) Note: If the amounts on lines 19 and 29 are the same, skip lines 38 through 51 and go to line 52.	37
38 Enter the smaller of line 19 or line 27	38
39 Enter the amount from line 36	39
40 Subtract line 39 from line 38	40
41 Multiply line 40 by 20% (.20) Note: If line 28 is zero or blank, skip lines 42 through 51 and go to line 52.	41
42 Enter the smaller of line 22 or line 25	42
43 Add lines 22 and 32	43
44 Enter the amount from line 19	44
45 Subtract line 44 from line 43. If zero or less, enter -0-	45
46 Subtract line 45 from line 42. If zero or less, enter -0-	46
47 Multiply line 46 by 25% (.25) Note: If line 24 is zero or blank, skip lines 48 through 51 and go to line 52.	47
48 Enter the amount from line 19	48
49 Add lines 32, 36, 40, and 48	49
50 Subtract line 49 from line 48	50
51 Multiply line 50 by 28% (.28)	51
52 Add lines 33, 37, 41, 47, and 51	52
53 Figure the tax on the amount on line 19. Use the Tax Table or Tax Rate Schedules, whichever applies	53

hedule D-1  
arm 1040)

**Continuation Sheet for Schedule D**  
**(Form 1040)**

OMB No. 1545-0074

2000

Department of the Treasury  
Internal Revenue Service (98)  
1040 shown on Form 1040

▶ See instructions for Schedule D (Form 1040).  
▶ Attach to Schedule D if you need more space to list transactions for lines 1 and 8.

Attachment  
Request No. 12A

Your social security number  
529-98-1688

MUEL H. AND TAMI J. RUSSELL

### Short-Term Capital Gains and Losses – Assets Held One Year or Less

[illegible]

Totals. Combine columns (d) and (f). Enter

**SCHEDULE E**  
**(Form 1040)**

### Supplemental Income and Loss

(From rental real estate, royalties, partnerships,  
S corporations, estates, trusts, REMICs, etc.)

OMB No. 0704-0188

20

Department of the Treasury  
Internal Revenue Service (99)  
Name(s) shown on return

▶ Attach to Form 1040 or Form 1041. ▶ See instructions for Schedule E (Form 1040).

### Assessment Sequence

Your social security number

SAMUEL H. AND TAMM J. RUSSELL.

529-98-10

**Part I** **Income or Loss From Rental Real Estate and Royalties** **Note.** Report income and expenses from your business personal property on Schedule C or C-EZ (see page E-1). Report farm rental income or loss from Form 4835 on page 2, line 39.

1 Show the kind and location of each rental real estate property:

2 For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:

- 14 days, or
- 10% of the total days rented at fair rental value?

(See page E-1.)

A COMMERCIAL BUILDING		B		C		D	
Income:		Properties		Total		(Add column B and C)	
		A	B	C			
3 Rents received	3	120,000			3		
4 Royalties received	4				4		
Expenses:							
5 Advertising	5						
6 Auto and travel (see page E-2)	6						
7 Cleaning and maintenance	7						
8 Commissions	8						
9 Insurance	9						
10 Legal and other professional fees	10						
11 Management fees	11						
12 Mortgage interest paid to banks, etc. (see page E-3)	12				12		
13 Other interest	13	38,884					
14 Repairs	14	2,215					
15 Supplies	15						
16 Taxes	16	2,825					
17 Utilities	17						
18 Other (list) ▶	18						
19 Add lines 5 through 18	19	43,924			19		
20 Depreciation expense or depletion (see page E-3)	20				20		
21 Total expenses. Add lines 19 and 20	21	43,924					
22 Income/(loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or 4 (royalties). If result is a loss, see page E-3 to find out if you must file Form 998.	22	76,076					
23 Deductible rental real estate loss.	23						
Caution: Your rental real estate loss on line 23 may be limited. See page E-3 to find out if you must file Form 998. Real estate professionals must complete line 42 on page 8.							
24 Income. Add positive amounts shown on line 22. Do not include any losses	24				24		
25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here	25				25		
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 39 on page 2 do not apply to you, also enter this amount on Form 1040, line 17.							

## Schedule E (Form 1040) 2000

Attachment Sequence No. 13

Page 2

(name) shown on return. Do not enter name and social security number if shown on other side.

AMUEL H. AND TAMI J. RUSSELL

529-98-1688

Notes: If you report amounts from farming or fishing on Schedule E, you must enter your gross income from those activities on line 41 below. Real estate professionals must complete line 42 below.

**Part III Income or Loss From Partnerships and S Corporations** If you report a loss from an at-risk activity, you must check either column (e) or (f) on line 27 to describe your investment in the activity. See page E-5. If you check column (f), you must attach Form 6118.

7	(a) Name	(b) Enter P for partnership; S for S corp.	(c) Check if foreign partnership	(d) Employer identification number	(e) At-risk (f) Some at-risk
	TS & G, INC.	P		87-0645164	X
	AUTOMATIC CAR CREDIT, INC.	S		87-0487189	

Passive Income and Loss		Nonpassive Income and Loss	
(a) Passive loss allowed (attach Form 8682 if required)	(b) Passive income from Schedule K-1	(c) Nonpassive loss from Schedule K-1	(d) Section 179 expense deduction from Form 4562
		4,651	
			7,090
			311,187
<b>18a Totals</b>			311,187
<b>b Totals</b>		4,651	7,090
<b>19</b> Add columns (h) and (k) of line 28a			311,187
<b>20</b> Add columns (g), (i), and (j) of line 28b			11,741
<b>21</b> Total partnership and S corporation income or (loss). Combine lines 29 and 30. Enter the result here and include in the total on line 40 below			299,446

**Part IV Income or Loss From Estates and Trusts**

32	(a) Name	(b) Employer ID number
A		
B		
C		
D		

Passive Income and Loss		Nonpassive Income and Loss	
(a) Passive deduction or loss allowed (attach Form 8682 if required)	(b) Passive income from Schedule K-1	(c) Deduction or loss from Schedule K-1	(d) Other income from Schedule K-1
A			
B			
C			
D			
<b>33a Totals</b>			
<b>b Totals</b>			
<b>34</b> Add columns (d) and (f) of line 33a			34
<b>35</b> Add columns (c) and (e) of line 33b			35
<b>36</b> Total estate and trust income or (loss). Combine lines 34 and 35. Enter the result here and include in the total on line 40 below			36

**Part V Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder**

37	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedule Q, line 30 (see page E-6)	(d) Taxable income (net loss) from Schedule Q, line 19	(e) Income from Schedule Q, line 36
<b>38</b> Combine columns (d) and (e) only. Enter the result here and include in the total on line 40 below					38

**Part VI Summary**

<b>39</b> Net farm rental income or (loss) from Form 4835. Also, complete line 41 below		39
<b>40</b> Total income or (loss). Combine lines 26, 31, 36, 38, and 39. Enter the result here and on Form 1040, line 17		40 375,522
<b>41</b> Reconciliation of Farming and Fishing Income: Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), line 15b; Schedule K-1 (Form 1120S), line 23; and Schedule K-1 (Form 1041), line 14 (see page E-6)		41
<b>42</b> Reconciliation for Real Estate Professionals. If you were real estate professional (see		42

Form 1116

## Foreign Tax Credit

OMB No. 1545

Department of the Treasury  
Internal Revenue Service (98)

(Individual, Estate, Trust, or Nonresident Alien Individual)

▶ Attach to Form 1040, 1040NR, 1041, or 990-T.

▶ See separate instructions.

2000

Attachment Sequence No.

Name

SAMUEL H. AND TAMI J. RUSSELL

Identifying Number as shown on page 1 of your tax

529-98-1688

Use a separate Form 1116 for each category of income listed below. See Categories of Income on page 3 of the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

- ☒ **Passive income**  
☐ **High withholding tax interest**  
☐ **Financial services income**  
☐ **Shipping income**  
☐ **Dividends from a DISC or former DISC**  
☐ **Certain distributions from foreign sales corporation (FSC) or former FSC**  
☐ **Lump-sum distributions**  
☐ **Section 901(j) income**  
☐ **Certain income re-sourced by treaty**  
☐ **General limitation income**

Resident of (name of country) ▶

Note: If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to more than one foreign country or U.S. possession, use a separate column and line for each country or possession.

**Part I Taxable Income or Loss From Sources Outside the United States (for Category Checked Above)**

	Foreign Country or U.S. Possession			Total (Add col. A, B)
	A	B	C	
<b>1</b> Enter the name of the foreign country or US possession. ▶	VARIOUS			
<b>2</b> Gross income from sources within country shown above and of the type checked above. See page 7 of the instructions: <b>DIVIDENDS</b>	694			
<b>3</b> Deductions and losses (Caution: See pages 8 and 9 of the instructions):	694			1
<b>4</b> Expenses definitely related to the income on line 1 (attach statement)				
<b>5</b> Pro rata share of other deductions not definitely related:				
<b>a</b> Certain itemized deductions or standard deduction. See instructions.	32,502			
<b>b</b> Other deductions (attach statement)				
<b>c</b> Add lines 3a and 3b	32,502			
<b>d</b> Gross foreign source income. See instructions.	694			
<b>e</b> Gross income from all sources. See instructions.	499,488			
<b>f</b> Divide line 3d by line 3e. See instructions.	0.0014			
<b>g</b> Multiply line 3c by line 3f.	46			
<b>4</b> Pro rata share of interest expense. See instructions:				
<b>a</b> Home mortgage interest (use worksheet on page 9 of the instructions).	18			
<b>b</b> Other interest expense				
<b>5</b> Losses from foreign sources				
<b>6</b> Add lines 2, 3g, 4a, 4b, and 5.	64			8
<b>7</b> Subtract line 6 from line 1. Enter the result here and on line 14, page 2.				7

**Part II Foreign Taxes Paid or Accrued** (See page 9 of the instructions.)

C O U N T R Y	Credit is claimed for taxes (you must check one): (a) <input checked="" type="checkbox"/> Paid (b) <input type="checkbox"/> Accrued	Foreign taxes paid or accrued							(g) Is accn (f)
		In foreign currency			In U.S. dollars				
		Taxes withheld at source on:			Taxes withheld at source on:			(f) Other foreign taxes paid or accrued	
		(a) Dividends	(b) Rents and royalties	(c) Interest	(d) Dividends	(e) Rents and royalties	(f) Interest		
A	12/31/2000				5				
B									
C									



Form 1118 (2000) SAMUEL H. AND TAMI J. RUSSELL

529-98-1688 Page 2

**Figuring the Credit**

9 Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I.	9	5
10 Carryback or carryover (attach detailed computation).	10	
11 Add lines 9 and 10.	11	5
12 Reduction in foreign taxes. See page 10 of the instructions.	12	
13 Subtract line 12 from line 11. This is the total amount of foreign taxes available for credit.	13	5
14 Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I. See page 10 of the instructions.	14	630
15 Adjustments to line 14. See page 10 of the instructions.	15	
16 Combine the amounts on lines 14 and 15. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 17 through 21. However, if you are filing more than one Form 1118, you must complete line 19.)	16	630
17 Individuals: Enter the amount from Form 1040, line 37. If you are a nonresident alien, enter amount from Form 1040NR, line 38. Estates and trusts: Enter your taxable income without the deduction for your exemption. Caution: If you figured your tax using the special rates on capital gains, see page 12 of the instructions.	17	372,304
18 Divide line 16 by line 17. If line 16 is more than line 17, enter "1".	18	0.0017
19 Individuals: Enter the amount from Form 1040, line 40. If you are a nonresident alien, enter the amount from Form 1040NR, line 39. Estates and trusts: Enter the total of Form 1041, Schedule G, lines 1a and 1b, or the total of Form 990-T, lines 36 and 37.	19	120,100
20 Multiply line 19 by line 18 (maximum amount of credit).	20	204
21 Enter the smaller of line 13 or line 20. If this is the only Form 1118 you are filing, skip lines 22 through 30 and enter this amount on line 31. Otherwise, complete the appropriate line in Part IV. See page 12 of the instructions.	21	5

**Summary of Credits From Separate Parts III (See page 12 of the instructions.)**

22 Credit for taxes on passive income.	22	
23 Credit for taxes on high withholding tax interest.	23	
24 Credit for taxes on financial services income.	24	
25 Credit for taxes on shipping income.	25	
26 Credit for taxes on dividends from a DISC or former DISC and certain distributions from a PSC or former PSC.	26	
27 Credit for taxes on lump-sum distributions.	27	
28 Credit for taxes on certain income re-sourced by treaty.	28	
29 Credit for taxes on general limitation income.	29	
30 Add lines 22 through 29.	30	
31 Enter the smaller of line 19 or line 30.	31	5
32 Reduction of credit for international boycott operations. See instructions for line 12 on page 10.	32	
33 Subtract line 32 from line 31. This is your foreign tax credit. Enter here and on Form 1040, line 43; Form 1040NR,	33	

Form 2210

**Underpayment of Estimated Tax by Individuals, Estates, and Trusts**

OMB No. 1

20

Attachment Sequence

Department of the Treasury  
Internal Revenue Service  
Name(s) shown on tax return

▶ Attach to Form 1040, 1040A, 1040NR, 1040NR-EZ, or 1041.

Identifying number

SAMUEL H. AND TAMI J. RUSSELL

529-98-1688

Note: In most cases, you do not need to file Form 2210. The IRS will figure any penalty you owe and send you a bill. File Form 2210 only if on boxes in Part I apply to you. If you do not need to file Form 2210, you still may use it to figure your penalty. Enter the amount from Part III, line 21, line 36, on the penalty line of your return, but do not attach Form 2210.

**Reasons for Filing** — If 1a, 1b, or 1c below applies to you, you may be able to lower or eliminate your penalty. But you must check boxes that apply and file Form 2210 with your tax return. If 1d below applies to you, check that box and file Form 2210 with your

1 Check whichever boxes apply (if none apply, see the Note above):

- a ☐ You request a waiver. In certain circumstances, the IRS will waive all or part of the penalty. See Waiver of Penalty on page 1 of the instructions.
- b ☐ You use the annualized income installment method. If your income varied during the year, this method may reduce the amount of one or more required installments. See page 6 of the instructions.
- c ☐ You had Federal income tax withheld from wages and, for estimated tax purposes, you treat the withheld tax as paid on the dates it was so withheld, instead of in equal amounts on the payment due dates. See the instructions for line 23 on page 3.
- d ☐ Your required annual payment (line 14 below) is based on your 1999 tax and you filed or are filing a joint return for either 1999 or 2000 but both years.

**Required Annual Payment**

2 Enter your 2000 tax after credits (see page 2 of the instructions).	2	1
3 Other taxes (see page 2 of the instructions).	3	
4 Add lines 2 and 3.	4	1
5 Earned income credit.	5	
6 Additional child tax credit.	6	
7 Credit for Federal tax paid on fuels.	7	
8 Add lines 5, 6, and 7.	8	
9 Current year tax. Subtract line 8 from line 4.	9	1
10 Multiply line 9 by 90% (.90).	10	108,086
11 Withholding taxes. Do not include any estimated tax payments on this line (see page 3 of the instructions).	11	
12 Subtract line 11 from line 9. If less than \$1,000, stop here; do not complete or file this form. You do not owe the penalty.	12	1
13 Enter the tax shown on your 1999 tax return (108.5% of that amount if the adjusted gross income shown on that return is more than \$150,000, or, if married filing separately for 2000, more than \$75,000). Caution: See page 3 of the instructions.	13	1
14 Required annual payment. Enter the smaller of line 10 or line 13.	14	1

Note: If line 11 is equal to or more than line 14, stop here; you do not owe the penalty. Do not file Form 2210 unless you checked box 1d above and skip the part and go to Part IV.

15 Enter the amount, if any, from line 11 above.	15	
16 Enter the total amount, if any, of estimated tax payments you made.	16	
17 Add lines 15 and 16.	17	
18 Total underpayment for year. Subtract line 17 from line 14. If zero or less, stop here; you do not owe the penalty. Do not file Form 2210 unless you checked box 1d above.	18	
19 Multiply line 18 by .05976.	19	
20 a If the amount on line 18 was paid on or after 4/15/01, enter -0-.		
b If the amount on line 18 was paid before 4/15/01, make the following computation to find the amount to enter on line 20.		
Amount on line 18	x	Number of days paid before 4/15/01
		x .00026
21 Penalty. Subtract line 20 from line 19. Enter the result here and on Form 1040, line 70; Form 1040A, line 45; Form 1040NR, line 68; Form 1040NR-EZ, line 27, or Form 1041, line 26.	21	

For Paperwork Reduction Act Notice, see page 1 of separate instructions.

Form

Form 2210 (2000) SAMUEL H. AND TAMI J. RUSSELL

529-98-1688 Page 1

**Regular Method** (See page 3 of the instructions if you are filing Form 1040NR or 1040NR-EZ.)**Section A - Figure Your Underpayment**

		Payment Due Dates			
		(a) 4/15/00	(b) 6/15/00	(c) 9/15/00	(d) 1/15/01
22 Required installments. If box 1b applies, enter the amounts from Schedule A, line 28. Otherwise, enter 25% (.25) of line 14, Form 2210, in each column	22	27,021	27,021	27,022	27,022
23 Estimated tax paid and tax withheld (see page 3 of the instructions). For column (a) only, also enter the amount from line 23 on line 27. If line 23 is equal to or more than line 22 for all payment periods, stop here; you do not owe the penalty. Do not file Form 2210 unless you checked a box in Part I. Complete lines 24 through 30 of one column before going to the next column.	23	3,260	23,260	23,260	23,259
24 Enter amount, if any, from line 30 of previous column	24				
25 Add lines 23 and 24	25		23,260	23,260	23,259
26 Add amounts on lines 28 and 29 of the previous column	26		23,761	27,522	31,284
27 Subtract line 26 from line 25. If zero or less, enter -0-. For column (a) only, enter the amount from line 23	27	3,260	0	0	
28 If the amount on line 27 is zero, subtract line 25 from line 26. Otherwise, enter -0-	28		501	4,262	
29 Underpayment. If line 22 is equal to or more than line 27, subtract line 27 from line 22. Then go to line 24 of next column. Otherwise, go to line 30	29	23,761	27,021	27,022	27,022
30 Overpayment. If line 27 is more than line 22, subtract line 22 from line 27. Then go to line 24 of next column	30				

**Section B - Figure the Penalty** (Complete lines 31 through 34 of one column before going to the next column.)

		April 16, 2000 - December 31, 2000			
		4/15/00	6/15/00	9/15/00	
31 Number of days from the date shown above line 31 to the date the amount on line 29 was paid or 12/31/00, whichever is earlier	31	153	199	107	
32 Underpayment on line 29 (see page 4 of the instructions) x Number of days on line 31 365 x .09	32	\$ 367.75	\$ 723.43	\$ 710.99	
		January 1, 2001 - April 15, 2001			
		12/31/00	12/31/00	12/31/00	1/15/01
33 Number of days from the date shown above line 33 to the date the amount on line 29 was paid or 4/15/01, whichever is earlier	33		15	105	90
34 Underpayment on line 29 (see page 5 of the instructions) x Number of days on line 33 365 x .09	34	\$	\$ 15.76	\$ 278.03	\$ 599.67
35 Penalty. Add all amounts on lines 32 and 34 in all columns. Enter the total here and on Form 1040, line 70; Form 1040A, line 45; Form 1040NR, line 65; Form 1040NR-EZ, line 27; or Form 1041, line 28	35				\$ 2,699

Form 2210 (2000)

2000

**Underpayment Penalty Worksheet**

SAMUEL H. AND TAMI J. RUSSELL

529-98-1688

Required Installment	Payment			Penalty				
	Date	Type*	Amount	Underpayment	Days Late	Rate	Amount of Penalty**	Penalty Part
First Qtr 27,021	4/15/00	2	3,260	23,761	61	0.090	356.42	
	6/15/00	2	3,260	20,501				
	6/15/00	3	20,000	501	92	0.090	11.33	
	9/15/00	2	501					
Total								3
Second Qtr 27,021	6/15/00			27,021	92	0.090	611.29	
	9/15/00	2	2,759	24,262				
	9/15/00	3	20,000	4,262	107	0.090	112.14	
Total								7
Rate Change	12/31/00			4,262	15	0.090	15.76	
	1/15/01	2	3,259	1,003				
	1/15/01	3	1,003					
Total								
Third Qtr 27,022	9/15/00			27,022	107	0.090	710.99	
Total								7
Rate Change	12/31/00			27,022	15	0.090	99.94	
	1/15/01	3	18,997	8,025	90	0.090	178.09	
	4/15/01	5	8,025					
Total								2
Fourth Qtr 27,022	1/15/01			27,022	90	0.090	599.67	
	4/15/01	5	27,022					
Total								

TOTAL UNDERPAYMENT PENALTY.....

- \* 1 = Overpayment  
2 = Withholding  
3 = Estimate  
4 = Extension

\*\* Underpayment x  $\frac{\text{Days Late}}{365 \text{ or } 366}$  x Rate

Form <b>4562</b>	<b>Depreciation and Amortization</b> (Including Information on Listed Property)	OMB No. 1545-0172
Department of the Treasury Internal Revenue Service (IRS)	► See separate instructions. ► Attach this form to your return.	<b>2000</b>
Name(s) shown on return	Identifying number	Attachment Sequence No. <b>67</b>
<b>SAMUEL H. AND TAMI J. RUSSELL</b>	<b>529-98-1688</b>	

Business or activity to which this form relates

**Part I - Summary**

<b>Part I Election To Expense Certain Tangible Property (Section 179). Note: If you have any "listed property," complete Part V before you complete Part I.</b>	
1 Maximum dollar limitation. If an enterprise zone business, see page 2 of the instructions	1 \$20,000
2 Total cost of section 179 property placed in service. See page 2 of the instructions	2 7,090
3 Threshold cost of section 179 property before reduction in limitation	3 \$200,000
4 Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4 0
5 Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see page 2 of the instructions	5 20,000

6 (a) Description of property	(b) Cost (business use only)	(c) Elected cost
From Schedule K-1	7,090	

7 Listed property. Enter amount from line 27	7 0
8 Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8 7,090
9 Tentative deduction. Enter the smaller of line 5 or line 8	9 7,090
10 Carryover of disallowed deduction from 1999. See page 3 of the instructions	10 0
11 Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11 20,000
12 Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12 7,090
13 Carryover of disallowed deduction to 2001. Add lines 9 and 10, less line 12	13 0

Note: Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

**Part II MACRS Depreciation for Assets Placed in Service Only During Your 2000 Tax Year (Do not include listed property)****Section A - General Asset Account Election**

4 If you are making the election under section 168(i)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box. See page 3 of the instructions	<input type="checkbox"/>
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**Section B - General Depreciation System (GDS) (See page 3 of the instructions.)**

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
5a 3-year property						
5b 5-year property						
5c 7-year property						
5d 10-year property						
5e 15-year property						
5f 20-year property						
5g 25-year property			25 yrs		S/L	
5h Residential rental property			27.5 yrs	MM	S/L	
			27.5 yrs	MM	S/L	
5i Nonresidential real property			39 yrs	MM	S/L	
				MM	S/L	

**Section C - Alternative Depreciation System (ADS) (See page 5 of the instructions.)**

6a Class life					S/L	
6b 12-year			12 yrs		S/L	
6c 40-year			40 yrs	MM	S/L	

**Part III Other Depreciation (Do not include listed property.) (See page 5 of the instructions.)**

7 GDS and ADS deductions for assets placed in service in tax years beginning before 2000	17
8 Property subject to section 168(f)(1) election	18
9 ACRS and other depreciation	19

**Part IV Summary (See page 5 of the instructions.)**

10 Listed property. Enter amount from line 26	20
11 Total. Add deductions from line 12, lines 15 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instructions	21
12 For assets shown above and placed in service during the current year, enter the portion	

**78-2-7. Repealed.**

1986

**78-2-7.5. Service of sheriff to court.**

The court may at any time require the attendance and services of any sheriff in the state.

1986

**78-2-8 to 78-2-14. Repealed.**

1986, 1988

**CHAPTER 2a****COURT OF APPEALS****Section****78-2a-1. Creation — Seal.****78-2a-2. Number of judges — Terms — Functions — Filing fees.****78-2a-3. Court of Appeals jurisdiction.****78-2a-4. Review of actions by Supreme Court.****78-2a-5. Location of Court of Appeals.****78-2a-6. Appellate Mediation Office — Protected records and information — Governmental immunity.****78-2a-1. Creation — Seal.**

There is created a court known as the Court of Appeals. The Court of Appeals is a court of record and shall have a seal.

1986

**78-2a-2. Number of judges — Terms — Functions — Filing fees.**

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court.

1988

**78-2a-3. Court of Appeals jurisdiction.**

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

- (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
- (ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings. 2001

**78-2a-4. Review of actions by Supreme Court.**

Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court.

1986

**78-2a-5. Location of Court of Appeals.**

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state.

1986

**78-2a-6. Appellate Mediation Office — Protected records and information — Governmental immunity.**

(1) Unless a more restrictive rule of court is adopted pursuant to Subsection 63-2-201(3)(b), information and records relating to any matter on appeal received or generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a result of any party's participation or lack of participation in the settlement program shall be maintained as protected records pursuant to Subsections 63-2-304(16), (17), (18), and (33).

cause. If the decree is to be entered upon the default of the respondent, evidence to support the decree may be submitted upon the affidavit of the petitioner with the approval of the court.

(c) If the petitioner and the respondent have a child or children, a decree of divorce may not be granted until both parties have attended the mandatory course described in Section 30-3-11.3, and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the respondent, upon the petitioner's affidavit.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree. 1997

#### 30-3-4.1 to 30-3-4.4. Repealed. 1990

#### 30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and parent-time — Determination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the

dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the child and their support, maintenance, health, and dental care for distribution of the property and obligations for debts reasonable and necessary.

(4) Child support, custody, visitation, and other matters related to children born to the mother and father after the decree of divorce may be added to the decree by modification.

(5) (a) In determining parent-time rights of parents, visitation rights of grandparents and other members of the immediate family, the court shall consider the interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in its order establishing a parent-time or visitation schedule provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and asserted or defended against in good faith.

(7) If a petition alleges substantial noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation or parent-time right has been previously granted by the court, the court shall award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

(8) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;

(ii) the recipient's earning capacity or ability to produce income;

(iii) the ability of the payor spouse to provide support;

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support;

(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill or ability to pay for education received by the payor spouse, allowing the payor spouse to attend school during marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, depart from the standard of living that existed at the time of trial. In marriages of short duration, when no child has been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

**78-45-2. Definitions.**

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).

(2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.

(3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Section 78-45-7.14.

(6) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and, if able to provide some financial resources to the family, is not able to support self by own means.

(7) "Child support" means a base child support award as defined in Section 78-45-2, or a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs.

(8) "Child support order" or "support order" means a judgment, decree, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise which:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

(c) establishes child support or registers a child support order under Title 78, Chapter 45f, Uniform Interstate Family Support Act.

(9) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.

(10) "Court" means the district court or juvenile court.

(11) "Guidelines" means the child support guidelines in Sections 78-45-7.2 through 78-45-7.21.

(12) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:

(a) all gain derived from capital assets, labor, or both, including profit gained through sale or conver-

(b) interest and dividends;

(c) periodic payments made under pension or retirement programs or insurance policies of any type;

(d) unemployment compensation benefits;

(e) workers' compensation benefits; and

(f) disability benefits.

(13) "Joint physical custody" means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support.

(14) "Medical expenses" means health and dental expenses and related insurance costs.

(15) "Obligee" means an individual, this state, another state, or another comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of child support or public assistance.

(16) "Obligor" means any person owing a duty of support.

(17) "Office" means the Office of Recovery Services within the Department of Human Services.

(18) "Parent" includes a natural parent, or an adoptive parent.

(19) "Split custody" means that each parent has physical custody of at least one of the children.

(20) "State" includes any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

(21) "Third party" means an agency or a person other than the biological or adoptive parent or a child who provides care, maintenance, and support to a child.

(22) "Tribunal" means the district court, the Department of Human Services, Office of Recovery Services, or court or administrative agency of any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

(23) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of a parent under Section 78-45-7.17.

(24) "Worksheets" means the forms used to aid in calculating the base child support award. 2000

**78-45-3. Duty of man.**

(1) Every father shall support his child and every child shall be presumed to be in need of the support of his father. Every man shall support his wife when she is in need.

(2) Except as limited in a court order under Section 30-3-5, 30-4-3, or 78-45-7.15:

(a) The expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses, and other necessities are chargeable upon the property of both parents, regardless of the marital status of the parents.

(b) Either or both parents may be sued by a creditor for the expenses described in Subsection (2)(a) incurred on behalf of minor children. 2000

**78-45-4. Duty of woman.**

(1) Every woman shall support her child and every child shall be presumed to be in need of the support of his mother. Every woman shall support her husband when he is in need.

(2) Except as limited in a court order under Section 30-3-5, 30-4-3, or 78-45-7.15:

(a) The expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses,

both parents, regardless of the marital status of the parents.

(b) Either or both parents may be sued by a creditor for the expenses described in Subsection (2)(a) incurred on behalf of minor children. 2000

#### 78-45-4.1. Repealed. 2000

#### 78-45-4.2. Natural or adoptive parent has primary obligation of support — Right of third party to recover support.

Nothing contained in this chapter shall act to relieve the natural parent or adoptive parent of the primary obligation of support. A third party has the same right to recover support from the natural or adoptive parent as a custodial parent. 2000

#### 78-45-4.3. Ward of state — Primary obligation to support.

A natural or an adoptive parent whose minor child has become a ward of this or any other state is not relieved of the primary obligation to support that child until he reaches the age of majority, regardless of any agreements or legal defenses that may exist between the parents or other care providers. Any state that provides support for a child shall have the right to reimbursement. 2000

#### 78-45-4.4. Support follows the child.

(1) Obligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2, when physical custody changes from that assumed in the original order, the parent without physical custody of a child shall be required to pay the amount of support determined in accordance with Sections 78-45-7.7 and 78-45-7.15, without the need to modify the order for:

- (a) the parent who has physical custody of the child;
- (b) a relative to whom physical custody of the child has been voluntarily given; or
- (c) the state when the child is residing outside of the home in the protective custody, temporary custody, or custody or care of the state or a state-licensed facility for at least 30 days. 2000

#### 78-45-4.5. Waiver and estoppel.

(1) Waiver and estoppel shall apply only to the custodial parent when there is no order already established by a tribunal if the custodial parent freely and voluntarily waives support specifically and in writing.

(2) Waiver and estoppel may not be applied against any third party or public entity that may provide support for the child.

(3) A noncustodial parent, or alleged biological father in a paternity action, may not rely on statements made by the custodial parent of the child concerning child support unless the statements are reduced to writing and signed by both parties. 1957

#### 78-45-5. Duty of obligor regardless of presence or residence of obligee.

An obligor present or resident in this state has the duty of support as defined in this act regardless of the presence or residence of the obligee. 1957

#### 78-45-6. District court jurisdiction.

The district court shall have jurisdiction of all proceedings brought under this act. 1957

#### 78-45-7. Determination of amount of support — Rebuttable guidelines.

(1) (a) Prospective support shall be equal to the amount

substantial change of circumstance on the part of the obligor or obligee or adjustment under Subsection 78-45-7.2(6) has been made.

(b) If the prior court order contains a stipulated provision for the automatic adjustment for prospective support the prospective support shall be the amount as stated in the order, without a showing of a material change of circumstances, if the stipulated provision:

- (i) is clear and unambiguous;
- (ii) is self-executing;
- (iii) provides for support which equals or exceeds the base child support award required by the guidelines; and
- (iv) does not allow a decrease in support as a result of the obligor's voluntary reduction of income.

(2) If no prior court order exists, a substantial change of circumstances has occurred, or a petition to modify an order under Subsection 78-45-7.2(6) has been filed, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.

(3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering relevant factors, including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the ability of an incapacitated adult child to earn, other benefits received by the adult child or on the adult child's behalf including Supplemental Security Income;
- (f) the needs of the obligee, the obligor, and the child;
- (g) the ages of the parties; and
- (h) the responsibilities of the obligor and the obligee to support others.

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon the Uniform Child Support Guidelines described in this chapter. 1

#### 78-45-7.1. Medical expenses of dependent children — Assigning responsibility for payment — Insurance coverage — Income withholding.

The court shall include the following in its order:

- (1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for dependent children;
- (2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost; and
- (3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Parts 4 and 5. 1

#### 78-45-7.2. Application of guidelines — Rebuttal.

(1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the awards resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision

use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case. If an order rebuts the presumption through findings, it is considered a deviated order.

(4) The following shall be considered deviations from the guidelines, if:

- (a) the order includes a written finding that it is a nonguidelines order;
- (b) the guidelines worksheet has the box checked for a deviation and has an explanation as to the reason; or
- (c) the deviation was made because there were more children than provided for in the guidelines table.

(5) If the amount in the order and the amount on the guidelines worksheet differ, but the difference is less than \$10, the order shall not be considered deviated and the incomes listed on the worksheet may be used in adjusting support for emancipation.

(6) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (7). Credit may not be given if:

- (i) by giving credit to the obligor, children for whom a prior support order exists would have their child support reduced; or
- (ii) by giving credit to the obligee for a present family, the obligation of the obligor would increase.

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(7) In a proceeding to modify an existing award, consideration of natural or adoptive children born after entry of the order and who are not in common to both parties may be applied to mitigate an increase in the award but may not be applied:

- (a) for the benefit of the obligee if the credit would increase the support obligation of the obligor from the most recent order; or
- (b) for the benefit of the obligor if the amount of support received by the obligee would be decreased from the most recent order.

(8) (a) If a child support order has not been issued or modified within the previous three years, a parent, legal guardian, or the office may petition the court to adjust the amount of a child support order.

(b) Upon receiving a petition under Subsection (8)(a), the court shall, taking into account the best interests of the child, determine whether there is a difference between the amount ordered and the amount that would be required under the guidelines. If there is a difference of 10% or more and the difference is not of a temporary nature, the court shall adjust the amount to that which is provided for in the guidelines.

(c) A showing of a substantial change in circumstances is not necessary for an adjustment under Subsection (8)(b).

(9) (a) A parent, legal guardian, or the office may at any time petition the court to adjust the amount of a child support order if there has been a substantial change in circumstances.

(b) For purposes of Subsection (9)(a), a substantial change in circumstances may include:

- (i) material changes in custody;
- (ii) material changes in the relative wealth or assets of the parties;

(iii) material changes of 30% or more in the income of a parent;

(iv) material changes in the ability of a parent to earn;

(v) material changes in the medical needs of the child; and

(vi) material changes in the legal responsibilities of either parent for the support of others.

(c) Upon receiving a petition under Subsection (9)(a), the court shall, taking into account the best interests of the child, determine whether a substantial change has occurred. If it has, the court shall then determine whether the change results in a difference of 15% or more between the amount of child support ordered and the amount that would be required under the guidelines. If there is such a difference and the difference is not of a temporary nature, the court shall adjust the amount of child support ordered to that which is provided for in the guidelines.

(10) Notice of the opportunity to adjust a support order under Subsections (8) and (9) shall be included in each child support order issued or modified after July 1, 1997. 2003

### **78-45-7.3. Procedure — Documentation — Stipulation.**

(1) In any matter in which child support is ordered, the moving party shall submit:

- (a) a completed child support worksheet;
- (b) the financial verification required by Subsection 78-45-7.5(5);
- (c) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines; and
- (d) the information required under Subsection (3).

(2) (a) If the documentation of income required under Subsection (1) is not available, a verified representation of the other party's income by the moving party, based on the best evidence available, may be submitted.

(b) The evidence shall be in affidavit form and may only be offered after a copy has been provided to the other party in accordance with Utah Rules of Civil Procedure or Title 63, Chapter 46b, Administrative Procedures Act, in an administrative proceeding.

(3) Upon the entry of an order in a proceeding to establish paternity or to establish, modify, or enforce a support order, each party shall file identifying information and shall update that information as changes occur with the court that conducted the proceeding.

(a) The required identifying information shall include the person's social security number, driver's license number, residential and mailing addresses, telephone numbers, the name, address and telephone number of employers, and any other data required by the United States Secretary of Health and Human Services.

(b) Attorneys representing the office in child support services cases are not required to file the identifying information required by Subsection (3)(a).

(4) A stipulated amount for child support or combined child support and alimony is adequate under the guidelines if the stipulated child support amount or combined amount equals or exceeds the base child support award required by the guidelines. 2000

### **78-45-7.4. Obligation — Adjusted gross income used.**

Adjusted gross income shall be used in calculating each parent's share of the base combined child support obligation. Only income of the natural or adoptive parents of the child may be used to determine the award under these guidelines. 1994

### **78-45-7.5. Determination of gross income — Imputed income.**

(1) As used in the guidelines, "gross income" includes:



(a) prospective income from any source, including nonearned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. However, if and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at his job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.

(3) Specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the party defaults, or, in contested cases, a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics.

(c) If a parent has no recent work history or their occupation is unknown, income shall be imputed at least

at the federal minimum wage for a 40-hour work week. impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

(i) the reasonable costs of child care for the parent's minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, crediting the amount against the potential obligation that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

#### 78-45-7.6. Adjusted gross income.

(1) As used in the guidelines, "adjusted gross income" is the amount calculated by subtracting from gross income alimony previously ordered and paid and child support previously ordered.

(2) The guidelines do not reduce the total child support award by adjusting the gross incomes of the parents. In establishing alimony, the court shall consider that in determining the child support, the guidelines do not provide a deduction from gross income for alimony.

#### 78-45-7.7. Calculation of obligations.

(1) Each parent's child support obligation shall be established in proportion to their adjusted gross incomes, unless the low income table is applicable. Except during periods of court-ordered parent-time as set forth in Section 78-45-7, the parents are obligated to pay their proportionate shares of the base combined child support obligation. If physical custody of the child changes from that assumed in the original order, modification of the order is not necessary, even if only one parent is specifically ordered to pay in the order.

(2) Except in cases of joint physical custody and sole custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the base child support award shall be determined as follows:

(a) combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table and

(b) calculate each parent's proportionate share of the base combined child support obligation by multiplying the base combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In the case of an incapacitated adult child, any amount that the incapacitated adult child can contribute to his or her support may be considered in the determination of child support and may be used to justify a reduction in the amount of support ordered, except that in the case of orders involving multiple children, the reduction shall not be greater than the effect of reducing the total number of children by one in the child support table calculation.

extended parent-time, the Office of Recovery Services shall apply the difference, from the child support due to the custodial parent or the state, between the full amount of current child support received during the month of extended parent-time and the adjusted amount of current child support due, to the past-due support obligation in the case.

(7) For cases not receiving IV-D child support services in accordance with Title 62A, Chapter 11, Parts 1, 3, and 4, any potential adjustment of the support payment during the month of extended visitation or any refund that may be due to the noncustodial parent from the custodial parent, shall be resolved between the parents or through the court without involvement by the Office of Recovery Services.

(8) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

(9) The reduction in this section does not apply to parents with joint physical custody obligations calculated in accordance with Section 78-45-7.9.

2003

#### **78-45-7.12. Income in excess of tables.**

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.

1994

#### **78-45-7.13. Advisory committee — Membership and functions [Effective until November 1, 2003].**

(1) On or before March 1, 1995, the governor shall appoint an advisory committee consisting of:

- (a) one representative recommended by the Office of Recovery Services;
- (b) one representative recommended by the Judicial Council;
- (c) two representatives recommended by the Utah State Bar Association;
- (d) two representatives of noncustodial parents, one male and one female, appointed by the governor;
- (e) two representatives of custodial parents, one male and one female, appointed by the governor; and
- (f) an uneven number of additional persons, not to exceed three, who represent diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) (a) Except as required by Subsection (b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(b) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1 in 1989 and 1991, and then on or before October 1 of every fourth year subsequently.

(c) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(6) Staff for the committee shall be provided from the existing budgets of the Department of Human Services.

(7) The committee ceases to exist no later than the date the subsequent committee under this section is appointed. 1997

#### **Advisory committee — Membership and functions [Effective November 1, 2003].**

(1) On or before March 1, 2007 and then on or before March 1 of every fourth year subsequently, the governor shall appoint an advisory committee consisting of:

- (a) one representative recommended by the Office of Recovery Services;
- (b) one representative recommended by the Judicial Council;
- (c) two representatives recommended by the Utah State Bar Association;
- (d) two representatives of noncustodial parents;
- (e) two representatives of custodial parents;
- (f) one representative with expertise in economics; and
- (g) two representatives from diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) The term of the committee members expires one month after the report of the committee is submitted to the Legislature under Subsection (4).

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(b) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1 in 2007 and then on or before October 1 of every fourth year subsequently.

(c) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

Monthly Combined Adj Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
10,001	— 10,100	826	1,400	1,808	2,061	2,270	2,441

LOW INCOME TABLE  
(Obligor Parent Only)

Monthly Adj Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
650	— 675	23	23	23	23	24	24
676	— 700	45	46	46	47	47	48
701	— 725	68	68	69	70	71	71
726	— 750	90	91	92	93	94	95
751	— 775	113	114	115	116	118	119
776	— 800		137	138	140	141	143
801	— 825		159	161	163	165	166
826	— 850		182	184	186	188	190
851	— 875		205	207	209	212	214
876	— 900		228	230	233	235	238
901	— 925		250	253	256	259	261
926	— 950			276	279	282	285
951	— 975			299	302	306	309
976	— 1,000				326	329	333
1,001	— 1,050				372	376	380

1994

#### 78-45-7.15. Medical expenses.

(1) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

- reasonableness of the cost;
- availability of a group insurance policy;
- coverage of the policy; and
- preference of the custodial parent.

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance.

(4) The parent who provides the insurance coverage may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium. In cases in which the parent does not have insurance but another member of the parent's household provides insurance coverage for the children, the parent may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium.

(5) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the *instant case*.

(6) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent children.

(7) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., of any change of

insurance carrier, premium, or benefits within 30 calendar days of the date he first knew or should have known of the change.

(8) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

(9) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections (7) and (8).

#### 78-45-7.16. Child care expenses — Expenses not incurred.

(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.

(2) (a) If an actual expense for child care is incurred, the parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred without obtaining a modification of the child support order.

(b) (i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.

(ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.

(3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b).

#### 78-45-7.17. Child care costs.

(1) The need to include child care costs in the child support order is presumed, if the custodial parent or the noncustodial parent, during extended parent-time, is working and actually incurring the child care costs.

(2) The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice.

#### 78-45-7.18. Limitation on amount of support orders.

(1) There is no maximum limit on the base child support award that may be ordered using the base combined child support obligation table, using the low income table, or awarding medical expenses except under Subsection (2).

(2) If amounts under either table as provided in Sections 78-45-7.14 in combination with the award of medical expenses exceeds 50% of the obligor's adjusted gross income, or adding the child care costs, total child support would exceed 50% of the obligor's adjusted gross income, the presumption under Section 78-45-7.17 is rebutted.

#### 78-45-7.19. Determination of parental liability.

(1) The district court or administrative agency may issue an order determining the amount of a parent's liability for medical expenses of a dependent child when the parent:

- is required by a prior court or administrative order to:

Section	
30-3-16.	Repealed.
30-3-16.1.	Jurisdiction of family court division — Powers.
30-3-16.2.	Petition for conciliation.
30-3-16.3.	Contents of petition.
30-3-16.4.	Procedure upon filing of petition.
30-3-16.5.	Fees.
30-3-16.6.	Information not available to public.
30-3-16.7.	Effect of petition — Pendency of action.
30-3-17.	Power and jurisdiction of judge.
30-3-17.1.	Proceedings deemed confidential — Written evaluation by counselor.
30-3-18.	Waiting period for hearing after filing for divorce — Exemption — Use of counseling and education services not to be construed as condonation or promotion.
30-3-19 to 30-3-31.	Repealed.
30-3-32.	Parent-time — Intent — Policy — Definitions.
30-3-33.	Advisory guidelines.
30-3-34.	Best interests — Rebuttable presumption.
30-3-35.	Minimum schedule for parent-time for children 5 to 18 years of age.
30-3-35.5.	Minimum schedule for parent-time for children under five years of age.
30-3-36.	Special circumstances.
30-3-37.	Relocation.
30-3-38.	Pilot Program for Expedited Parent-time Enforcement.

### 30-3-1. Procedure — Residence — Grounds.

(1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter.

(2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action.

(3) Grounds for divorce:

- (a) impotency of the respondent at the time of marriage;
- (b) adultery committed by the respondent subsequent to marriage;
- (c) willful desertion of the petitioner by the respondent for more than one year;
- (d) willful neglect of the respondent to provide for the petitioner the common necessities of life;
- (e) habitual drunkenness of the respondent;
- (f) conviction of the respondent for a felony;
- (g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;
- (h) irreconcilable differences of the marriage;
- (i) incurable insanity; or
- (j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

(4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless:

(i) the respondent has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and

(ii) the court finds by the testimony of competent witnesses that the insanity of the respondent is incurable.

(b) The court shall appoint for the respondent a guardian ad litem who shall protect the interests of the respondent. A copy of the summons and complaint shall be served on the respondent in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the respondent resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the respondent and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, and the courts and judges possess in other actions for divorce.

(e) The petitioner or respondent may, if the respondent resides in this state, upon notice, have the respondent brought into the court at trial, or have an examination of the respondent by two or more competent physicians, to determine the mental condition of the respondent. For this purpose either party may have leave from the court to enter any asylum or institution where the respondent may be confined. The costs of court in this action shall be apportioned by the court.

1997

### 30-3-2. Right of husband to divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

1953

### 30-3-3. Award of costs, attorney and witness fees — Temporary alimony.

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

2001

### 30-3-4. Pleadings — Findings — Decree — Use of affidavit — Sealing.

(1) (a) The complaint shall be in writing and signed by the petitioner or petitioner's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the